

18th CONGRESS, }
1st Session.

[60]

MESSAGE

FROM THE

PRESIDENT OF THE UNITED STATES,

TRANSMITTING PART OF THE

Correspondence,

BETWEEN THE

Governments of France and the United States,

IN RELATION TO

CLAIMS OF CITIZENS OF THE UNITED STATES,

FOR

SPOILIATIONS UPON OUR LAWFUL COMMERCE.

FEBRUARY 5, 1824.

Read, and ordered to lie upon the table.

WASHINGTON :

PRINTED BY GALES & SEATON.

1824.

To the Speaker of the House of Representatives of the U. S.

I transmit to the House of Representatives a report from the Secretary of State, agreeably to a resolution of that House of the 11th of December last, with the papers which accompanied that report.

JAMES MONROE.

Washington, 2d February, 1824.

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DEPARTMENT OF STATE,

Washington, 2d February, 1824.

The Secretary of State, to whom has been referred the resolution of the House of Representatives, of the 11th of December last, "requesting the President of the United States to communicate to that House copies of such parts of the Correspondence of the late Minister of the United States at the Court of France, with the French Government, and such parts of the Correspondence of said Minister with the Secretary of State, relative to claims of citizens of the United States for spoliations upon our lawful commerce, as, in his opinion, may not be inconsistent with the public interest;" has the honor of submitting to the President the papers required by that resolution.

JOHN QUINCY ADAMS.

List of Papers transmitted.

Secretary of State to Mr. Gallatin, (General Instructions,)	15 April, 1816—Extracts.
Same to the same,	7 May, “ Copy.
Mr. Gallatin to Secretary of State,	
No. 10. - -	11 Nov. “ Extract.
Same to Duke de Richelieu,	9 “ “ Original.
Same to the Secretary of State,	
No. 19. - -	20 Jan. 1817—Extracts.
Same to Duke de Richelieu,	26 Dec. 1816—Copy.
Duke de Richelieu to Mr. Gallatin,	16 Jan. 1817—Translation.
Mr. Gallatin to Secretary of State,	
No. 27. - -	23 April, “ Extracts.
Same to the Duke de Richelieu,	22 “ “ Copy.
Same to the Secretary of State,	
No. 37. - -	12 July, “ Extracts.
Same to same, No. 55.	2 Jan. 1818—Extract.
Same to same, No. 67.	27 April, “ Extract.
Same to the Duke de Richelieu,	3 “ “ Copy
Duke de Richelieu to Mr. Gallatin,	7 “ “ Translation.
Secretary of State to Mr. Gallatin,	31 Dec. “ Extracts.
Mr. Gallatin to Marquis Desolle,	11 Feb. 1819—Copy.
Same to Secretary of State,	
No. 113. - -	3 July, “ Extracts.
Minister of Finance to Mr. Parish,	22 May, “ Translation.
Mr. Gallatin to Secretary of State,	
No. 140. - -	16 March, 1820—Original.
Same to Duke de Richelieu,	9 June, 1818—Original.
Decree of Council of State, (with translation.) - -	23 Dec. 1819—In original.
Mr. Gallatin to Baron Pasquier,	15 March, 1820—Original.
Same to Secretary of State,	
No. 143. - -	27 April, “ Extract.
Same to same, No. 147.	9 June, “ Extract.
Same to Baron Pasquier,	9 May, “ Original.
Secretary State to Mr. Gallatin,	31 March, 1821—Extract.
Same to same, - -	29 June, “ Copy.
Mr. Gallatin to Secretary of State,	
No. 193. - -	15 Nov. “ Extract.
Same to Baron Pasquier,	31 Oct. “ Translation.
Same to Secretary of State,	
No. 200. - -	14 Jan. 1822—Extract.
Same to Viscount de Montmorency, (with translations.)	10 “ “ Original.

Mr. Gallatin to Secretary of State,

No. 203.	-	-	28 Jan. 1822—	Extract.
Same to same, No. 208.			23 April, “	Extract.
Same to same, No. 212.			13 May, “	Copy.
Same to Viscount de Montmo-				
rency,	-	-	3 “ “	Copy.
Same to Secretary of State,				
No. 216.	-	-	13 June, “	Extracts.
Viscount de Montmorency to Mr.				
Gallatin,	-	-	1 “ “	Translation.
Mr. Gallatin to Viscount de Mont-				
morency,	-	-	13 “ “	Original.
Mr. Gallatin to Secretary of State,				
No. 230.	-	-	8 “ “	Extract.
Same to Viscount de Montmo-				
rency,	-	-	17 Aug. “	Original.
Same to Mr. de Villèle,			31 “ “	Translat'n ext.
Mr. de Villèle to Mr. Gallatin,			3 Sept. “	Translation.
Mr. Gallatin to Secretary of State,				
No. 233.	-	-	24 Sep. “	Extract.
Same to same, No. 236.			13 Nov. “	Extract.
Mr. de Villèle to Mr. Gallatin,			6 “ “	Translation.
Mr. Gallatin to Mr. de Villèle,			12 “ “	Original.
Same to Secretary of State,				
No. 237.	-	-	19 “ “	Copy.
Mr. de Villèle to Mr. Gallatin,			15 “ “	Translation.
Mr. Gallatin to Secretary of State,				
No. 250.	-	-	27 Feb. 1823—	Extract.
Same to Viscount de Chateau-				
briand,	-	-	“ “ “	Original.

CORRESPONDENCE, &c.

Extracts from the general instructions of Mr. Monroe, Secretary of State, to Mr. Gallatin, Envoy Extraordinary, and Minister Plenipotentiary of the United States to France, dated

DEPARTMENT OF STATE,

Washington, 15th April, 1816.

"It has, at all times, since our Revolution, been the sincere desire of this Government to cultivate a good intelligence with France. The changes which have taken place in her Government have never produced any change in this disposition. The United States have looked to the French Nation, and to the existing Government, as its proper organ, deeming it unjustifiable to interfere with its interior concerns. The existing Government has, in consequence, been invariably recognized here, as soon as known. Should you find, that unfounded prejudices are entertained on this subject, which a frank explanation may remove, you are authorized to make it.

"Cherishing these sentiments towards the French Nation, under all the Governments which have existed there, it has not been less a cause of surprise, than of regret, that a corresponding disposition has not, at all times, been reciprocated by the French Government towards the United States. The history of the last ten years is replete with wrongs, received from that Government, for which no justifiable pretext can be assigned. The property wrested, in that space of time, from our citizens, is of great value, for which reparation has not been obtained. These injuries were received, under the administration of the late Emperor of France, on whom the demand of indemnity was incessantly made, while he remained in power. Under the sensibility thereby excited, and the failure to obtain justice, the relations of the two countries were much affected. The disorder which has, of late, existed in France, has prevented a repetition of this demand; but now, that the Government appears to be settled, it is due to our citizens, who were so unjustly plundered, to present their claim, anew, to the French Government."

"A gross sum will be received, in satisfaction of the whole claim, if the liquidation and payment of every claim, founded on just principles, to be established, cannot be obtained.

“The management of this important interest is committed to your discretion, as to the moment and manner of bringing it under consideration, in which the prospect of obtaining a satisfactory reparation will, necessarily, have its due weight. You will be furnished with a letter of Instruction, authorizing you to provide for it, by convention, should that mode be preferred.”

The Secretary of State to Mr. Gallatin.

DEPARTMENT OF STATE,

Washington, 7th May, 1816.

SIR: On the presumption that his most Christian Majesty may be disposed to provide, by special convention, for the just claims of the citizens of the United States against France, as, also, for the like claims of French subjects against the United States—this letter is given to you by direction of the President, as an authority and instruction to negotiate a convention for that purpose, with such person, or persons, as may have a like authority from his most Christian Majesty.

I have the honor to be, &c.

JAMES MONROE.

Extract of a letter, No. 10, from Mr. Gallatin, Envoy Extraordinary and Minister Plenipotentiary to France, to Mr. Monroe, Secretary of State, dated

PARIS, 11th November, 1816.

“I have the honor to enclose the copy of my note, of the 9th instant, to the Duke de Richelieu, on the subject of indemnities due to citizens of the United States, on account of the illegal and irregular sequestrations and condemnations made under the authority of the former Government of France. I had some difficulty in collecting, from scattered documents, the information necessary to present a correct view of the subject, and adapted to existing circumstances.”

PARIS, 9th November, 1816.

MONSIEUR LE DUC: I had already the honor, in some preliminary conversations, to present to your Excellency a general view of the losses sustained by American citizens, under various illegal acts of the former Government of France; and, for which, the United States claim an indemnity from the justice of his most Christian Majesty.

The right to an indemnity, being founded on the law of nations, extends to all cases, where there has been an evident infraction of that law, such as it is recognized by civilized nations.

Of the acts of the former French Government, openly violating that law; those issued on the 21st November, 1806, at Berlin, and on the 17th December, 1807, at Milan, were promulgated in the shape of public decrees, applicable, at least, nominally, to other nations, as well as the United States. Other acts were, exclusively, directed against America; appearing, also, sometimes under the form of decrees, as that of Bayonne, of the 17th April, 1808, and that of Rambouillet, of the 23d March, 1810; and, at times, being only special orders for seizing or selling certain American vessels and cargoes. To these various acts, must be added, the wanton destruction, at different times, of American vessels on the high seas.

That the Berlin and Milan decrees, so far as they declared liable to capture and condemnation neutral vessels, pursuing an innocent commerce, and contravening no municipal laws, were an evident violation of the law of nations, has not been, and cannot be, denied. The plea of retaliation, grounded on a supposed acquiescence of neutral powers in certain acts of Great Britain, and urged in justification of those decrees, was unjust in its principle, and altogether inadmissible, when affecting a neutral instead of an enemy. And, even that pretence for plundering a friendly power was abandoned, when the two belligerent governments, whilst continuing to capture the vessels of the neutral trading with their respective enemy, permitted a direct commerce, by means of licences. But that plea was, in point of fact, destitute of foundation with respect to the United States. That they had uniformly opposed the aggressions of Great Britain, on their neutral rights, is notorious. It is not less true, and appears from all their public acts and from the tenor of their negotiations with both belligerents, that it was solely owing to the acts of France, to the Berlin and Milan decrees, that still more decisive measures of resistance were not early adopted against Great Britain. So long as France and England equally continued to violate the neutral rights of America, she could not have selected either of those nations for an enemy, without tamely submitting to the aggressions of the other, and without deviating from that impartial course which it was her constant endeavor to pursue. And when, at last, the French decrees had been revoked, so far as America was concerned, the perseverance of England in continuing her unlawful orders, and in violating the rights of the United States, produced a declaration of war, on their part, against that country.

Notwithstanding the intrinsic justice of the claim of the United States for losses sustained by their citizens, under the Berlin and Milan decrees, it was intimated by your excellency that those decrees having been of a general nature, other nations that had also experienced losses by their operation, would have had an equal right to an indemnity, and that those acts not having been enumerated in the last treaties and conventions between France and the other Euro-

pean powers, amongst those for which a compensation should be made by France, the United States ought not to expect to be placed on a better footing than other nations.

It would be preposterous to suppose, and it cannot have been intended to suggest that the United States can in any case be bound by treaties to which they were not parties, and in which no attention whatever could have been paid to their interest. Nor can, by any correct analogy, the principles therein adopted, be applied to America.

The allied powers naturally sought to obtain indemnity in those cases in which they were most interested. Almost all, if not all of them had been, during the late European wars, either at war, or in alliance with France, whilst the United States had never stood in either of those relations towards her. Hence, it necessarily followed, that the injuries sustained by the subjects of those powers, differed essentially from those inflicted by France on American citizens. The Berlin and Milan decrees, so far as they extended beyond prohibitory municipal regulations, although nominally general, applied in fact almost exclusively to the United States. If there was any exception, it was in amount too small, and applied to nations whose weight was too inconsiderable, to be taken into consideration. Of the other powers, many had no interest that indemnities should be obtained on that account, whilst several of them, namely, England, Spain, Holland, Denmark and Naples, had a direct interest that the principle should not be admitted. It will, of course, appear, that, by the convention between France and Great Britain, compensation is to be made by France for all the property of English subjects confiscated or sequestered, not only during the last war, but also during that which preceded the treaty of Amiens, and including even the loss arising from the reduction of the public debt of France, to one third of its nominal amount, with the exception of the seizures and confiscations made in consequence of the laws of war, and of the prohibitory laws. And the exception precisely embraces the principal classes of injuries, for which the United States are entitled to indemnity, since their grounds of complaint against France are the abuse on her part of belligerent rights and the unlawful extension of prohibitory laws beyond their legitimate sphere.

Not only were the Berlin and Milan decrees an evident and acknowledged violation of the law of nations; not only the plea of retaliation against England, and of a presumed acquiescence in her aggressions was unfounded, with respect to the United States; not only neither the treaties between France and the allied powers are binding on America, nor the principles adopted in those treaties applicable to the relations in which she stood towards France; but those decrees were also an open infraction of the treaties subsisting between the two countries; namely, of the 12th, 13th, and 14th articles of the convention of the 30th of September, 1800, which did not expire till the 31st of July, 1809. For, it was therein stipulated, that the citizens of either country might sail with their ships and merchandise

(contraband goods excepted) from any port whatever, to any port of the enemy of the other, and from a port of such enemy, either to a neutral port, or to another port of the enemy, unless such port should be *actually* blockaded; that a vessel sailing for an enemy's port without knowing that the same was blockaded, should be turned away, but neither be detained, nor her cargo be confiscated; that implements and ammunition of war, should alone be considered contraband of war; and that free ships should make free goods, extending that freedom even to an enemy's property, on board the ships belonging to the citizens of either country. The French decrees, in violation of those stipulations, after having declared the British islands and possessions in a state of blockade, although they were not pretended to be actually blockaded, made liable to capture and condemnation all American (as well as other neutral) vessels, sailing on the high seas, from or to an English port, or even, which might have been visited by an English vessel, as well as every species of merchandise belonging to English subjects, or of English origin.

It is true that, in answer to the American minister who had applied for explanations respecting the construction intended to be given to the Berlin decree, assurances were at first given that it would produce no change in the previous regulations respecting neutral navigators, nor in the convention with the United States. This construction, which gave to that decree the character only of a prohibitory municipal law, was adhered to during the ten first months which followed its promulgation; and it was only in September, 1807, that merchandise found on board of neutral vessels at sea was declared liable to condemnation, merely on account of its being of British growth or manufacture. This fact is here stated for the purpose of observing that the assurances which had thus been given, and the practical construction thus first put on the Berlin decree, prevented the early opposition which otherwise the United States would have made to it; and that this supposed acquiescence on their part, served as a pretence for the British orders in council of November, 1807, which were immediately followed by the French decree of Milan.

The decrees and orders of the French Government, which applied exclusively to the United States, will now be noticed.

Assailed by the simultaneous aggressions of the two belligerent powers, the first step of the American Government was to withdraw the commerce of the United States from the depredations to which it was everywhere exposed. An embargo was laid in the latter end of the year 1807, on all their vessels: and notwithstanding the extraordinary privations and the great loss of revenue which were incurred, that measure was persevered in during fifteen months. In the mean while, strong remonstrances were made to the French and English governments, on the subject of their unlawful acts. Not only was the appeal to their justice fruitless, but it appears that, by an order said to have been issued at Bayonne, on the 17th of April, 1808, all American vessels then in the ports of France, or which might thereafter come into them, were directed to be seized, on the pretence that no

vessel of the United States could then navigate, without infringing a law of the United States, as if the infraction of a municipal law could be lawfully punished by a foreign power; as if it had not been notorious, that a number of American vessels, which were abroad when the embargo became known to them, remained in foreign seas and countries, in order to avoid the effect of that law.

The pressure of the embargo on the agriculture and commerce of the United States became such, that Congress found it proper to modify that measure. By a law of the 1st March, 1809, the act laying an embargo was repealed with respect to all countries, England and France only excepted, and the vessels and merchandise of both countries were excluded from the United States after the 20th of May following; with the proviso, that, in case either France or Great Britain should so revoke or modify their edicts, as that they should cease to violate the neutral commerce of the United States, the commercial intercourse of the United States should be renewed with the nation so doing. This law in its nature was entirely municipal and pacific; and its object was to avoid immediate hostilities and to give further time for negotiations; to withdraw, as far as practicable, the navigation of the United States from the operation of the unlawful acts of both France and England, and to give to both sufficient inducements for repealing their edicts, by the actual privation of the benefits derived from the American commerce, and by the prospect that, in case of such repeal by either nation, she would again enjoy those advantages of which her enemy would continue to be deprived.

The act was officially communicated on the 29th of April, 1809, by the American minister to the French government. It was not at that time treated as hostile; and if it produced no favorable change, no remonstrance was made against it. But, towards the end of the same year, orders were given to seize all the American vessels in France or in the countries occupied by her arms; and after a great number had been thus seized, principally in Spain and in Holland, an imperial decree was, on the 23d March, 1810, issued at Rambouillet, ordering or rather confirming that seizure, extending it to all American vessels which had entered France or those countries since the 20th May, 1809, and directing that the product of the sales should be deposited in the *caisse d'amortissement*. The act of Congress of 1st March, 1809, was alleged as the motive for that outrageous measure. In point of fact, it is not believed that any vessel, the property of French subjects, had been forfeited for a violation of that act. At least it is not recollected that any application was made for the remission of such forfeiture, to the Treasury Department, which, by the law, was authorized to grant such remissions, and would certainly have done it, in any case where the law might not have been within the knowledge of the parties. But it cannot be necessary seriously to discuss a plea, which was evidently but a pretence for plunder. It will be sufficient to observe, that the gross injustice of the Rambouillet decree consists in its retrospective operation; and that if the French government had promulgated an order, excluding American vessels

from the ports of France and of the countries occupied by her arms, and pronouncing the penalty of confiscation after due notice of that order, American citizens who might have voluntarily and knowingly violated the provisions of what was only a municipal law, would have been justly liable to its penalties.

The American property seized or captured by virtue either of those four general decrees, or of special orders, which are but partially known to the Government of the United States, may, in reference to its present situation, be classed under two general heads, viz: that which has never been condemned, and that which has been actually confiscated.

The first class embraces the vessels and cargoes burnt at sea, and those which have been sequestered.

It is not necessary to make any observations on the destruction of vessels at sea, your Excellency having already intimated that the Government of France was disposed to make compensation for acts of that nature.

The vessels and cargoes sequestered, and not condemned, consist principally of those seized at St. Sebastian, and other places, in the latter end of the year 1809, and in the beginning of 1810, and sold by virtue of the decree of Rambouillet. Fourteen vessels which, during that winter, had been driven into Holland, and which, by a particular agreement between the Government of that country and that of France, bearing date, it is said, the 16th March, 1810, were put at the disposal of France, are of the same description. And exclusively of other special orders of the same nature, which may not be known to me, the cargoes of seven vessels arrived at Antwerp in the beginning of the year 1807, and which were permitted to be landed there, were also sequestered and finally sold, by virtue of an order of Government, dated the 4th of May, 1810. In all these cases there has been no condemnation, no final decision. The vessels and cargoes were only seized and sold by order of Government, and the proceeds of sales *deposited* in the *caisse d'amortissement*, or in some other public chest.

The right to demand and obtain a decision on all those suspended cases, is undeniable. Either the proceeds of sales will be restored to the lawful owners by virtue of that decision, or the present Government of France must go beyond what had been done by the former Government, and decree the final confiscation of property, which even that Government had been unwilling to condemn. I will not permit myself for a moment to suppose that there can be any hesitation on that question.

With respect to property actually condemned, without intending to impair the indisputable right of the United States, to an indemnity for every condemnation made by virtue of decrees, violating the acknowledged law of nations, I will beg leave to add some observations on the manner in which those decrees were executed, for the purpose of showing that an investigation and revision of those condemnations ought to take place, even if it was admitted that France

had a right to issue the Berlin and Milan decrees, and to condemn vessels contravening their tenor. The time necessary to obtain information in that respect, has occasioned the delay which has taken place in making this communication, since the last conference I had the honor to hold with your Excellency.

1. These condemnations have, as has already been stated, been made in contravention of an existing treaty; so far at least as relates to property seized or captured prior to the 31st of July, 1809.

2. Several of the condemnations, or rather acts of confiscation, were made by what has been called "imperial decisions," meaning thereby not those cases where an appeal may have been made from the council of prizes to the council of state, but those instances where the order of condemnation issued from that council, or from Napoleon himself, without any previous regular trial and condemnation by the council of prizes. Such proceedings must be considered as irregular and arbitrary acts, contravening the usages and law of nations. It is sufficiently hard for the neutral that his property should be tried exclusively by the tribunals of the belligerent, where a natural bias exists in favor of the captors. It is at least necessary that the decisions should be made by a regular and permanent tribunal, acting according to fixed rules, and affording every security of which such an institution is susceptible. But the United States have a right to demand that those imperial decisions should be annulled not only as contravening the usages and law of nations, but as violating also an existing treaty. It had been stipulated by the 22d article of the convention, of the 30th September, 1800, "that, in all cases the established courts for prize causes in the country to which the prizes might be conducted, should alone take cognizance of them." Of 27 vessels and cargoes (captured or seized prior to the 1st of November, 1810,) which, as appears by a list now before me, were condemned by imperial decisions, eighteen had been seized or captured, prior to the 31st of July, 1809, the day on which the convention expired.

3. I have been assured that, upon investigation, it will be found that some of the decisions of the council of prizes itself, have taken place, without observing the forms prescribed by law; without giving an opportunity to the parties of bringing their proofs; without an examination of the ship-papers, and, in fact, in obedience to an imperial order. A decision of the council, dated 10th September, 1811, and by which six ships and cargoes were at once condemned, is particularly mentioned.

4. The retrospective operation of the Rambouillet decree has already been mentioned. It will also be found that, in several instances, the Milan decree has received a similar construction, and that vessels have been condemned for having contravened that decree, which could not have known its existence, having sailed from American ports either before, or a short time after, it had been issued, and the alleged infraction of the decree itself having, at least in one instance, taken place prior to its date.

5. It might have been expected, that, when the Berlin and Milan

decrees were declared to be revoked from and after the 1st of November, 1810, no further condemnations would take place with respect to cases not yet decided at that time; notwithstanding which, it appears that forty-eight ships and cargoes, previously seized or captured, were condemned subsequent to that day, namely, by the Council of Prizes, eighteen before, and ten after, the 28th of April, 1811; and by imperial decisions, eleven before, and nine after, the last mentioned day. Yet the decree of that day (28th April, 1811) enacts and declares, that the Berlin and Milan decrees are, from and after the 1st November, 1810, definitively considered, as if they had not existed (*comme non avenues*) with respect to American vessels.

6. Several condemnations were made for frivolous pretences, of vessels captured after the 1st November, 1810, or, in other cases which the general decrees could not reach; such as alleged irregularities in the certificates of origin, or in other ship papers; presumed navigation under British convoy; mutiny on board; intention to remit the proceeds of sales through England.

It appears, from the preceding statement, that, independent of the illegality of the Berlin and Milan decrees, there is sufficient cause for the revision of the condemnations which have taken place. Nor is there any thing novel in that course. A number of unlawful captures of American vessels having been made by Great Britain during the commencement of her war with France, particularly by virtue of certain British orders in council, of the 6th November, 1793, it was agreed, by the 7th article of the treaty of November, 1794, between the United States and England, that full and complete compensation should be made by the British government for the losses and damage sustained by citizens of the United States, by reason of *irregular or illegal captures or condemnations* of their vessels and other property, under color of authority or commissions from his Britannic Majesty; and a sum exceeding twelve hundred thousand pounds sterling, in specie, was actually paid to American citizens, by the decision of the joint commission appointed in conformity with the said treaty.

From this view of the subject, I have the honor to propose to your excellency an arrangement, founded on the following basis, in which, without abandoning the just rights of the citizens of the United States, a positive stipulation is avoided, which would, at this time, bind the government of France to make compensation generally for all the condemnations under the Berlin and Milan decrees.

1st. That the government of France will engage to make compensation to the citizens of the United States: 1. For all vessels and cargoes captured, seized, or sequestered, which have not been definitively condemned by the Council of Prizes, and the proceeds of which were placed either in the public treasury, in the *caisse d'amortissement*, or in any other public chest; and also for all vessels and cargoes destroyed at sea, and likewise not condemned by the Council of Prizes: 2. For the losses sustained by reason of such other irregular or unlawful seizures, captures, or condemnations, as will be de-

creed, by a joint commission, to have been made contrary to public law and justice, or in contravention of existing treaties.

2d. That a joint commission (or commissions) shall be established, with power, 1. To liquidate the amount due for property either destroyed at sea, or sequestered and not definitively condemned as aforesaid: 2. To decide in what other cases of irregular or unlawful seizures, captures, or condemnations, the government of France is justly bound to make also compensation, and to what amount.

The manner in which the commission or commissions should be appointed and organized, may, it is presumed, be easily arranged, and every reasonable stipulation will be admitted which may be necessary to limit exclusively the right to compensation to cases of bona fide American property.

I cannot end this communication without saying, that the present situation of France is known and felt by the government of the United States. It is evidently the interest of America that France should be prosperous and powerful. It is the sincere wish of the government of America, that the present government of France may soon be relieved from the difficulties which the lamentable event of March, 1815, has occasioned. It is, therefore, with reluctance, and only in obedience to a sacred duty, that a demand is made, at this time, which may have a tendency to increase those difficulties; and every disposition exists to accede to such time and mode of payment as, without being inconsistent with the just rights of the citizens of the United States, may be least inconvenient to France.

Permit me to request your excellency to take the subject into early consideration, and to communicate to me, as soon as may be practicable, the determination of his Majesty's government.

I have the honor to be, with the highest consideration,

Your excellency's most obedient servant,

ALBERT GALLATIN.

His Excellency the DUKE DE RICHELIEU,
Minister Secretary of State for the Department
of Foreign Affairs, &c. &c. &c.

Extracts of a letter, No. 19, from Mr. Gallatin, Envoy Extraordinary and Minister Plenipotentiary to France, to Mr. Monroe, Secretary of State, dated

PARIS, 20th January, 1817.

"Having received no answer from the Duke de Richelieu to my letter of the 9th November last, I addressed to him, on the 26th December, a short note, of which, and of his answer, dated the 16th instant, copies are enclosed.

"In the interview which accordingly took place to day, I requested that he would proceed to state what he had concluded to offer in answer to the basis proposed in my note of the 9th of November. He said that his offer would fall very short of our demands; that he would not go beyond an indemnity for vessels burnt at sea, and for those, the proceeds of which, had been only sequestered and deposited in the *caisse d'amortissement*. He added that he would make his proposal in writing, and that this would not be attended with much delay. I then said that I could not give any opinion on his proposal, until I had received his note, but that I wished him to understand, that, if the Government of the United States thought it proper (which I could not at present promise) to accept an indemnity for certain classes only of our claims, this never would be purchased by a relinquishment of the other just demands of our citizens."

Mr. Gallatin to the Duke de Richelieu.

PARIS, 26th December, 1816.

The undersigned, sensible of the important business which, at the opening of the two Chambers, must have engrossed the attention of His Most Christian Majesty's Government, has heretofore avoided to urge the consideration of the subject-matter of the letter, which he had the honor to address, on the 9th of November last, to his excellency the Duke de Richelieu. It has, however, become necessary that he should be able to communicate to his own Government, the result of his application. He therefore requests an interview, as early as will suit the convenience of the Duke de Richelieu.

The undersigned embraces, with pleasure, this opportunity of presenting to his excellency the Duke de Richelieu the reiterated assurance of his most distinguished consideration.

ALBERT GALLATIN.

The Duke de Richelieu to Mr. Gallatin.

[TRANSLATION.]

PARIS, 16th January, 1817.

The Duke de Richelieu cannot but deeply regret that his weighty and multiplied avocations have compelled him to put off, until this moment, the time he had promised himself to receive Mr. Gallatin, and now fixes the time for Monday morning, the 20th of the present month, at noon, if that day meets his convenience.

He prays him to accept, meanwhile, the renewed assurance of his most distinguished consideration,

Extract of a letter, No. 27, from Mr. Gallatin to the Secretary of State, dated Paris, 23d April, 1817.

“I had an interview on the 13th instant with the Duke de Richelieu, in which he announced to me, that he had concluded not to give a written answer to my note of the 9th of November last, on the subject of American claims. The claims of the subjects of European powers which France was, by the convention of 1815, bound to pay, had been estimated at a sum not exceeding at most, one hundred and fifty millions of francs (or an annuity of seven and a half millions). But it was now found, that the terms thus imposed were much harsher than the French government had expected, or than the allies themselves had intended. The reclamations, under the convention with Great Britain, did not indeed exceed the sum of fifty millions, at which they had been estimated; but those of the subjects of continental powers, filed with the commission appointed for that purpose, exceeded twelve hundred millions, without including a portion of the Spanish claims, the time for presenting which, had not yet expired. Many of those demands would undoubtedly be rejected, or reduced by the commission. Still, the probable amount which might be declared justly due, so far exceeded every previous calculation, and was so much beyond the ability of France to pay, that he (the Duke) was now employed in seeking some means of obtaining modifications which might bring the payments in some measure within the resources of the country. Under such circumstances, and whilst unable to face the engagements which superior force had imposed on them, it was, he said, utterly impossible for his majesty’s Government to contract voluntarily new obligations. They were not willing to reject absolutely and definitively our reclamations *in toto*; they could not at this time admit them. What he had now verbally communicated, could not, for many reasons, become the ground of an official answer to my note. He had therefore concluded that a silent postponement of the subject was the least objectionable course, since, having now made our demand for indemnity in an official manner, the question would be left entire for discussion at some more favorable time, after France was in some degree disentangled from her present difficulties. He added, that if there was any apparent inconsistency between the language he had formerly held, and what he was now compelled to say, it must be ascribed to the circumstances he had stated, to the extraordinary and frightful amount to which he had lately found other foreign claims to have swelled.

“After some remarks on the disappointment which, after what had passed in our first conversations, this unexpected determination must produce, I replied, that the payment by France of exaggerated and doubtful claims to the subjects of every other foreign power, did but increase the injustice of refusing to admit the moderate and unexceptionable demands of the American citizens. The present embarrassments of France, however, increased by the magnitude of those

foreign private claims, could form no solid objection to the recognition and liquidation, although they might impede the immediate discharge of our reclamations. It was with this view of the subject that I had, from the first outset, expressed the disposition of the Government of the United States to accommodate that of France, as to the time and manner of making compensation to the claimants. I added, that his declining to answer my note in writing, would, exclusively of other objections, leave no trace of the ground on which he placed the postponement of the subject.

"The Duke, without answering my observations in a direct way, gave me to understand, that, after the great sacrifices to which the King's ministers had been compelled to give a reluctant assent, and the magnitude of which would soon be known, they would not dare to take the responsibility of acknowledging a new debt, although made payable at a distant period.

"On my mentioning that his majesty's government had voluntarily recognized all the engagements, previously contracted with French subjects, and which constituted what was called the *arriéré*, and suggesting that the sequestrations of American property might be considered as coming under that description, which would prevent the necessity of asking a specific credit for that object from the legislative body; he answered that the law would not justify such a construction.

"Having exhausted every argument which the occasion suggested, I ended the conference, by saying, that, as I could not compel him to give me a written answer, I would reflect on the course which it behoved me to pursue, and that, probably, I would refer the case to my Government. He said that he intended to write to Mr. De Neuville to make to you a communication similar to that which he now had made to me."

"I addressed to him yesterday the letter, of which a copy is enclosed. Its principal object, as you will perceive, is to put on record the ground on which he had himself placed the postponement of the subject, and to leave the door open to further representations respecting cases of property not condemned, in case you should think it best not to urge further at present the demand for indemnity in all cases."

Mr. Gallatin to the Duke de Richelieu.

PARIS, 22d April, 1817.

MONSIEUR LE DUC: In the interview which I had the honor to have with your Excellency on the 13th instant, you intimated that the increased magnitude of the claims made upon France by subjects of European Powers, under the conventions of the year 1815, rendered it necessary to postpone, to a more favorable time, the discussion of

the American claims which were the subject of my note of the 9th of November last. Without repeating here the unavailing arguments which I urged against this indefinite and unexpected delay, I will only say that I am not authorized to accede to it, and that it cannot be viewed favorably by the Government of the United States, after the assurances which had been given of its disposition to concur in any reasonable arrangement which might be proposed, with respect to the time and manner of making compensation to the claimants.

I presume, however, that the postponement is intended to apply only to those claims, which, though founded on strict justice, were found by his Majesty's Government in a situation that seemed to render a Convention necessary for their proper adjustment. The demands for property burnt at sea, or seized and sequestered without having ever been condemned or even brought to a trial before any tribunal whatever, are not of that description. They are, to all intents and purposes, an *arriéré*, or unliquidated debt, for property seized, which, if not condemned, must be paid for, and the settlement of which does not require a specific convention. It cannot be supposed that, after his Majesty's Government has not only agreed to pay various foreign claims, of a different nature, but has recognized all those of French subjects arising from the acts of the former Governments of France, the citizens of the United States should alone be excepted from the operation of those measures dictated by justice and sound policy, which, under most arduous circumstances, have so eminently contributed to surmount every difficulty and to restore public credit. If any distinction was indeed attempted to be made, it should be in favor of the citizens of a foreign nation at peace, whose property was forcibly arrested from them, rather than in favor of subjects who voluntarily advanced theirs, and in many instances with a view to an expected profit. But no such distinction is claimed; and I only trust that, whilst the communication made to me compels me to wait for further orders from my Government on the subject of American claims, generally, those of the description last mentioned shall not remain suspended, and that orders shall be given to the proper authorities for their speedy liquidation, and for discharging them in a manner as favorable at least, as that which has been provided for the claims of French subjects known by the name of *arriéré*.

I request your Excellency to accept the assurances of the distinguished consideration with which I have the honor to be, your most obedient servant,

ALBERT GALLATIN.

Extract of a letter from Mr. Gallatin, No. 37, detailing the substance of a Conversation with the Duke de Richelieu, to the Secretary of State, dated

PARIS, 12th July, 1817.

“He, (the Duke de Richelieu,) then said, that he wished it to be clearly understood, that the postponement of our claims, for spoiliations, was not a rejection; that a portion of them was considered as founded in justice; that he was not authorized to commit his Majesty’s Government by any positive promise; but that it was their intention to make an arrangement for the discharge of our just demands, as soon as they were extricated from their present embarrassments. He still persisted, however, in his former ground, that they could not, at present, recognize the debt, or adjust its amount.”

Extract of a letter from the same, No. 55, to Mr. Adams, Secretary of State, dated

PARIS, 2d January, 1818.

“Fifteen millions are spoken of, which, with the five millions already paid, and the three allotted to British subjects, will make an aggregate of 460 millions, in five per cent. stock, paid by France for European private claims. Ours, in the mean while, remain in the same situation; and I wait for an answer to my despatch, No 27, (of the 23d of April last,) before I take any new steps on the subject.”

Extract of a letter from the same, No. 67, to the same, dated

PARIS, 27th April, 1818.

“I had, in my letter of the 2d of January last, mentioned, that I would wait for an answer, from your Department, to my despatch of the 23d April, 1817, before I took any new steps on the subject of our own claims: and I had no expectation that a new application would, at this moment, prove successful. Yet, it appeared, that, to remain altogether silent, at the moment when an arrangement for the claims of the subjects of every other nation was on the eve of being concluded, might, in some degree, be injurious to the rights of our citizens. It was also apprehended, that, in their public communications, the Ministers of the King, wishing to render the new Convention as palatable as possible, might announce to the nation, in general terms, that all the foreign claims of individuals were now satisfied. These considerations induced me to address to the Duke de Richelieu

the note, of the 3d instant, of which, I have the honor to enclose a copy, as well as of that by which he acknowledged the receipt of mine. You will perceive that, in his communication to the Chambers, (which has been inserted, correctly, in no other newspaper than the *Moniteur*,) that he has expressed himself in the following terms: 'France, (by this payment,) is liberated, both as to principal and interest, from all the debts contracted towards the subjects of the other *European Powers*, prior to the 20th November, 1815.' The consideration of our claims is not, therefore, barred by any thing which has taken place; but there is not yet any disposition to take up the subject."

Mr. Gallatin to the Duke De Richelieu.

PARIS, 3d April, 1818.

MONSIEUR LE DUC: I have not had the honor to address your excellency on the subject of American claims, since my letter of the 22d of April last. The disposition of the government of the United States, never to abandon the just rights of their citizens, and, at the same time, to pay every due regard to the unfavorable circumstances under which France has been placed, is sufficiently known to your excellency. It is, however, notorious, that negotiations are now carried on, for the amicable liquidation of all the private claims of the subjects of European powers against France; and it is generally believed that the negotiations are on the eve of being terminated, and that the sum to be paid on that account will be definitively settled. The magnitude of those claims, and the uncertain result of the liquidations contemplated by the former conventions with the Allied Powers, had been alleged, in April last, as reasons which rendered it necessary to postpone, at that time, the consideration of American reclamations. It has therefore become my duty to bring these once more to your excellency's recollection.

It is not my intention to renew, at this moment, the discussion of the justice of our demands. In this stage of the business, I could only refer to the facts and observations, contained in former notes, which still remain unanswered. But I must say, that further delays in the adjustment of American claims, when those of the subjects of other nations are settled, could not be viewed favorably by the Government of the United States; whilst, on the other hand, a simultaneous and definitive arrangement of all foreign demands arising from the injustice of the former government of France, seems most consistent with sound policy, and could not fail to have a beneficial effect on public credit.

Whatever course may be pursued, I feel satisfied that the result of the late negotiations with the European powers will not be considered or announced by his Majesty's government as a total liberation of all the foreign claims of individuals: for, however unsuccessful my

endeavors may heretofore have been, I have uniformly ascribed that result to the untoward situation of France; and I know that my government has never ceased to place a firm reliance on the spirit of justice and good faith which animates his Majesty's councils.

I request your excellency to accept the assurance of the distinguished consideration with which I have the honor to be, your excellency's most obedient servant,

ALBERT GALLATIN.

Duke De Richelieu to Mr. Gallatin.

[TRANSLATION.]

Paris, 7th April, 1818.

SIR: You have done me the honor to address to me, on the 3d of this month, some new observations on the American claims, which I shall take care to lay before his Majesty.

Accept, Sir, the assurances of the high consideration with which I have the honor to be, your very humble and obedient servant,

RICHELIEU.

Extracts of a letter from the Secretary of State to Mr. Gallatin, date

DEPARTMENT OF STATE,

Washington, 31st December, 1819

"No communication from you, since your return to France, has yet been received; but it is hoped that, since the foreign troops have been withdrawn from that country, and an adjustment has been made by the French government of the claims of the subjects of European powers, there will be time and a disposition to make a suitable provision for those of citizens of the United States."

"Meanwhile, you have herewith enclosed, a copy of a statement made to this department, of a claim of Archibald Gracie and sons, which appears to stand upon grounds so peculiar and unexceptionable, that we cannot but hope the French government will give immediate satisfaction upon it, without waiting for the discussion or delay which may be thought necessary for others, and without prejudice or disparagement to them."

Mr. Gallatin to the Marquis Dessolle, Minister of Foreign Affairs.

PARIS, 11th February, 1819.

MONSIEUR LE MARQUIS: I have the honor to transmit to your excellency a memorial, addressed by Mr. Parish, a citizen of the United States, to his excellency the Minister of Finance, on the subject of a claim which it appears has been laid before that department.

Having been confined for the last three weeks by indisposition, I have been prevented from asking an interview of your excellency, with which I was desirous of being favored before I presented to you this memorial, and renewed my application for the settlement of the American claims in general. But, having recently received very special orders from my government, accompanied by a particular recommendation of Mr. Parish's claim, I am no longer at liberty to defer the discussion of this interesting concern.

I have therefore to request your excellency to have the goodness to examine the official notes which I had the honor to address to the Duke of Richelieu upon the subject of these claims, and to which I have yet received no answer. I shall not now enlarge upon the view presented in my note of the 9th November, 1816. By that of the 22d of April, 1817, it will be seen, that the negotiations on that subject were suspended, solely in consideration of the trying situation in which France was then placed, and especially, of the embarrassments of the administration by the enormous and unexpected mass of claims brought forward by the subjects of allied powers. These obstacles are now happily removed; every demand of all the European powers and their subjects has been amicably adjusted and settled. The rights, so legitimate, of the citizens of the United States, alone remain unsatisfied. My government, preserving an unshaken confidence in his Majesty, cannot doubt that the time has at length arrived when ample justice will be rendered to its claims.

With respect to that of Mr. Parish, it may be remarked, that it is very simple, and is susceptible of being adjusted without waiting the result of, or in the least interfering with, a general settlement. In fact, the cargoes in question were never condemned, but were only sold for the joint benefit of all, and the proceeds deposited, provisionally, in the Sinking Fund. It is further important to remark, that, by an order of the French government, permission was granted to the consignees of cargoes sequestered at that period, at Antwerp, to take possession and dispose of them, on their giving an obligation to become responsible for the amount, to the public treasury, in the event of a decision pronouncing their confiscation. The house of Mr. Ridgway, consul of the United States, together with that of Mr. Parish, refused their assent to a condition which implied an admission of the legality of the seizure. The European consignees, with whom this consideration had no weight, received and sold their goods; and their obligations were subsequently returned to them. Thus, by refunding to the houses of Ridgway and Parish the proceeds of the cargoes con-

signed to them, the decision which was virtually carried into effect in the case of all others, similarly situated, will only receive its due application, as it regards them.

I have to observe, that, although the claims of both these houses are perfectly similar to each other, that of Mr. Parish is the only one which appears to have been taken into consideration by the Department of Finance.

In the hope that my health may soon permit me to confer personally with your excellency, I have the honor to be, &c. &c.

ALBERT GALLATIN.

*Extracts of a letter from Mr. Gallatin to the Secretary of State,
dated*

PARIS, July 3d, 1819.

"I transmitted, in my despatch No. 100, the copy of the letter which I had addressed to Marquis Dessolle, on the 11th of February last, on the subject of American claims in general, and more particularly of that of Messrs. Gracie and Parish.

"On the 23d of March, in transmitting to the same minister a letter from Mr. Hyde de Neuville, in behalf of Mr. Gracie, I reminded him of my preceding note, and requested that a report which the Director General of the Douanes was shortly to make on the claim, might be communicated to me before the Minister of Finances should decide upon it. This was the more important, as the director was known to be decidedly hostile to the claim, and to the restitution of any sum which had, in any shape, found its way to the public treasury.

"My request was not complied with; but Mr. Parish still thought that the affair had taken a favorable turn, and, not expecting an immediate decision, left this city for Antwerp, and went thence on some business to England. From this last country he wrote to me a few days ago, and transmitted the enclosed copy of a letter addressed to him by the Minister of Finances, and by which he is informed that his claim is inadmissible.

"The minister's letter is not less incorrect as to facts than weak in argument. The order to sell and to pay into the treasury the proceeds of the sales of sequestered property is not, and was not, by the then existing government, considered as a condemnation. When the vessels in question arrived at Antwerp, the only penalty to which they were liable, for having touched in England, was, to be refused admission, and the only question was, whether this exclusion should be enforced, or whether the consignees should be permitted to sell the cargoes. It was not at all, by giving a retrospective effect to the Milan decree,

that the cargoes were sold. The sale took place about the same time that the property seized at St. Sebastian was sold. It was done by virtue of an order from Government, distinct from the Rambouillet decree, and for which no motive was assigned. I have requested Mr. Parish's lawyer to procure copies of the order of sale, and of that by which the money was paid into the public treasury, instead of the *caisse d'amortissement*; for, although the substance of the orders is known, the text has not been communicated.

"But, however easy it might be to answer the minister's letter, there would be some inconvenience in pursuing that course, or in prosecuting further Mr. Parish's claim, distinct from others of the same nature."

"The decision of the Minister of Finances, founded on the assumed principle that no redress remains when the money has been paid into the treasury, and been expended, would apply with equal force to all the American claims. If it becomes necessary to combat seriously that doctrine, it will be better to do it generally, and in a direct correspondence with the Minister of Foreign Affairs, than by answering a letter which is not addressed to me, and applying my arguments to a single case."

"In the present state of things I will try, until I am positively instructed, to keep the negotiation alive, but without urging a decision, unless I can ascertain that a favorable result will be thus obtained."

The Minister of Finance to Mr. Parish.

[TRANSLATION.]

PARIS, 22d May, 1819.

SIR: You have applied, in behalf of Mr. Archibald Gracie, of New York, for the restitution of the value of the cargoes of three American ships, the *Perseverance*, the *Hiram*, and the *Mary*, sequestered by the Imperial Government in 1807, and the proceeds of which were afterwards confiscated by it.

Having had a detailed statement laid before me, of the circumstances connected with this transaction, the documents exhibited established the following facts.

By a decree, issued at Berlin, 21st November, 1806, the British islands were placed in a state of blockade. By articles 7 and 8 of this decree, every vessel coming directly from England or from the English colonies, or having been there since the publication of the said decree, was refused admission into any port; and every vessel attempting to contravene that clause, by means of a false declaration, was, together with the cargo, subject to seizure and confiscation, as if

they were English property. It was while these legislative measures were in force, that the three ships in question arrived at Antwerp, to your address. They had put into England; a circumstance, which was, however, not considered by the custom house as an irremissible cause of confiscation, there being reason to presume that it was through stress of weather.

In the interval of time previous to the decision which was to be made by the chief of the state, a proposal was made to you, to dispose, conditionally, of the cargoes of these vessels, on your engaging to refund the proceeds, in the event of their final confiscation. You refused your assent to this offer, and, at a subsequent period, claimed its execution; but things had then changed, the legislative measures having become more rigorous.

By a decree of 23d November, 1807, it was declared:

ART. 1. "That all vessels, which, after touching in England, from any cause whatsoever, shall enter the ports of France, shall be seized and confiscated, together with their cargoes, without exception or distinction of goods and merchandise."

By a retrospective effect, which I am certainly very far from wishing to justify, but to which it is proper to advert, because it forms one of the striking features of the case, this decree of 23d November, was enforced as to these three vessels. It was ineffectually that the Director General of the Customs represented to the Head of the Government, that the English had no interest whatever in these three vessels, and that they were solely and bona fide American property; an immediate sale of their cargoes having been ordered by the supreme authority on the 4th of May, 1810. This order was carried into Execution on the 15th of June following, and the proceeds, at first deposited in the sinking fund, were subsequently withdrawn, in conformity, also, with the same superior orders, and placed in the public treasury, as having definitively become the property of the state.

I admit with you, sir, the iniquity of these measures; and with you I deplore their effects; but, to repair them, is not within the compass of my power. If the cargoes in question still existed in the custom house stores, they should be immediately restored to you; but they were sold, and their proceeds no longer exist. The whole transaction was terminated, irrevocably terminated, four years prior to the restoration, and it is not within the power of his Majesty's Government to revive an obsolete claim, to renew a discussion on rights which are extinct, or to repair individual losses by an augmentation of the public burthens.

With the expression of my regrets, be pleased, sir, to accept the assurance of my perfect consideration.

The Minister of Finance, and Secretary of State,

BARON LOUIS.

No. 140.

PARIS, *March 16th*, 1820.

SIR: I had, on the 9th of June, 1818, addressed a letter to the Duke de Richelieu, in relation to the American vessels "Dolly" and "Telegraph," burnt at sea by two French frigates, in the latter end of the year 1811. Mr. Lagrange, the lawyer of the owners, communicated to me, a short time ago, the decision of the council of state in that case, copy of which, as well as of my letter to the Duke de Richelieu, is herewith enclosed. You will thereby perceive that the application for indemnity has been rejected, principally on the ground that the French captains must have been ignorant of the revocation of the Berlin and Milan decrees, since the decree of the 28th April, 1811, was not published till the 8th of May, 1812.

It appeared to me essential, not only to remonstrate against this flagrant injustice, but also to refute at large the doctrine thus attempted to be established, in violation of the solemn engagements of the French Government. The effect the decision might have on our claims in general, and the ground which had been uniformly assumed by the Government of the United States, in its discussions with that of Great Britain, and in all the public reports made on that subject, are considerations too obvious to require any comment on my part. I have the honor to enclose a copy of the letter which I have addressed to Mr. Pasquier on the occasion, and am, with great respect,

Sir, your obedient servant,

ALBERT GALLATIN.

The Hon. JOHN QUINCY ADAMS,
Secretary of State, Washington.

PARIS, *June 9th* 1818.

MONSIEUR LE DUC: I had heretofore abstained from addressing your Excellency on the subject of special American claims for spoliations committed on our commerce by the French authorities. A general decision had appeared, and still seems to be, the most eligible mode of coming to a satisfactory arrangement. Being, however, informed, that some cases are still pending before the council of state, it becomes my duty to depart in these instances from the line of conduct I had adopted.

I have, therefore, the honor to transmit to your Excellency, a memoir, addressed to the King in council, in behalf of the owners of the ships and cargoes of the American vessels *Dolly* and *Telegraph*, burnt at sea, in November and December, 1811, by the French frigates *la Méduse* and *la Nymphe*.

It is certainly preposterous to suppose that His Majesty's council will, at this time, condemn American vessels for any presumed con-

travention to the iniquitous decrees of Berlin and Milan. But a discussion of that point is not even necessary in these cases. It is evident that those vessels were destroyed several months, at least, after the solemn revocation of those decrees, so far as respected the United States. It is equally evident that neither the presumed fact that the captors were ignorant of that revocation, nor the omission of formalities, to use no stronger language, on their part, can be plead against the American owners. It seems unnecessary, in a case so plain, to enforce those arguments, or to anticipate objections. In simply recommending it to your Excellency's attention, I feel a perfect confidence that the parties will obtain from His Majesty's council that decision in their favor, which has been too long protracted, and to which they are so justly entitled.

I pray your Excellency to accept, &c.

ALBERT GALLATIN.

His Excellency the DUKE DE RICHELIEU,
Minister of Foreign Affairs, &c. &c. &c.

CONSEIL D'ETAT.

Extrait du Registre des Délibérations, Séance du 23 Décembre, 1819.

Louis, par la Grace de Dieu, Roi de France et de Navarre, sur le rapport du Comité du Contentieux.

Vu la requête à nous présentée au nom des propriétaires et chargeurs des navires Américains le *Dolly*, et le *Télégraphe*, capturés le 29 Novembre et 6 Décembre, 1811, par les frégates Françaises la *Méduse* et la *Nymphe*, et brutés en mer par les ordres du Sieur Raoul, capitaine de la frégate la *Méduse* et commandant la dite division; la dite requête enregistrée au Secrétariat Général de notre Conseil d'Etat, le 11 Juin, 1818, et tendant à ce qu'il nous plaise,

1. Declarer les dites captures nulles et illegales;
2. Ordonner que les propriétaires des dits navires et de leur chargements seroient indemnisés des pertes et dommages que le brulement leur a occasionné;
3. Les renvoyer devant qui de droit pour la liquidation des dites indemnités, sous la reserve de tous moyens et exceptions, notamment d'agir et de conclure, ainsi qu'il appartiendra, contre les auteurs ou complices des soustractions qu'ils pretendent avoir été commises à bord des deux navires, et généralement sous toutes les réserves de droit;

Vu les procès-verbaux de la prise et du brulement des navires Américains le *Dolly* et le *Télégraphe*, rédigés en mer les 29 Novembre et 6 December, 1811, signés des capitaine, lieutenant, enseignes de vaisseau et agent comptable composant l'équipage de la frégate la *Méduse*;

Vu les actes de protest et déclaration faits par devant le consul des Etats Unis à L'Orient, savoir par le Sieur Stephen Bayard, capitaine du navire le *Télégraphe*, le 11 Janvier, 1812, et par le Sr. Guillaume Friat, passager à bord du *Dolly*, et se disant propriétaire de diverses marchandises embarquées à bord du dit bâtiment, en date du 29 Décembre, 1811;

Vu les connoissemens et actes d'affirmation annexés à ces déclarations;

Vu les conclusions, en date du 31 Octobre, 1814, du Procureur Général près le Conseil des Prises, à qui ces réclamations avoient été soumises;

Vu la décision prise par se conseil le même jour, 31 Octobre, 1814, par laquelle il étoit ordonné qu'avant faire droit, les personnes composant les équipages des frégates le *Méduse* et la *Nymphe* seroient interrogées sur les diverses circonstances des dites prises;

Vu les procès-verbaux des interrogatoires subis le 13 Janvier, 1815, par le Sr. Raoul, capitaine de la frégate la *Méduse*, et le Sr. Crôm, alors contre maitre sur la même frégate desquels il resulte que ses prises et brulemens ont en lieu en suite de ses instructions, qui lui prescrivoient l'exécution des décrets de Berlin et de Milan;

Vu les décrets datés de Berlin, du 21 Novembre, 1806, et de Milan, des 23 Novembre et 17 Décembre, 1807;

Considérant qu'il est constant que le navire le *Dolly*, chargé de marchandises à la destination de la Havane sortoit de Liverpool, port de la domination Anglaise, et que le navire le *Télégraphe*, chargé de farine à Philadelphia, étoit destiné pour Lisbonne, occupé à cette époque par les troupes Anglaises; et que dès lors ces batimens naviguoient en contravention aux décrets de Berlin et de Milan;

Considérant que la première notification publique qui ait été donnée du décret de révocation des dits décrets à l'égard des Américains, n'a en lieu que par les notes insérées dans le Moniteur du huit Mai, 1812, plusieurs mois après la prise des dits batimens, et que des lors des capitains de la *Méduse* et de la *Nymphe* ne pouvoient en avoir connoissance, et qu'il paroît même d'après la note en date du 12 Mars, 1812, attribuée par les requérans au ministre plénipotentiaire des Etats Unis, qu'à cette époque ce ministre lui même ne la connoissoit pas—

Notre Conseil d'Etat entendu, nous avons ordonné et ordonnons, ce qui suit:

Art. 1er. La requête des propriétaires et chargeurs des navires le *Télégraphe* et le *Dolly* est rejetée, sans rien préjuger sur les réserves insérées dans leurs conclusions.

Art. 2me. Notre Garde des Sceaux, Ministre le Secrétaire d'Etat au Département de la Justice, et notre Ministre Secrétaire d'Etat au Département de la Marine et des Colonies, sont chargés, chacun en ce qui le concerne, de l'exécution de la présente ordonnance.

Approuvé le 29 Decembre, 1819.

LOUIS.

Le Garde des Sceaux, Ministre de la Justice,

Par le Roi,

H. DE SERRE.

Pour expédition conforme à la minute enregistrée à Paris, le 6 Janvier, 1820, par Billard, qui a reçu 29f. 50c. subvention comprise.

Le Secrétaire Général du Conseil d'Etat.

HOCHET,

Translation of the foregoing decree.

COUNCIL OF STATE.

Extract from the register of deliberations, session of 23d December, 1819.

Louis, by the grace of God King of France and Navarre, upon the report of the Board of Questions:

Having seen the petition presented to us in the name of the proprietors and owners of the American ships the *Dolly*, and the *Telegraph*, captured on the 29th November and 6th December, 1811, by the French frigates the *Meduse* and the *Nymphe*, and burnt at sea, by the orders of Mr. Raoul, captain of the frigate *Meduse*, and commander of said division, the said petition being registered at the Secretary General's office of our Council of State, the 11th June, 1818, and that it would be our pleasure,

1st. To declare the said captures null and illegal;

2d. To ordain that the proprietors of said ships, and of their lading, should be indemnified for the losses which the burning them has occasioned;

3d. To remit them to the legal tribunal for the liquidation of said indemnities, under the reservation of all means and exceptions; especially to proceed and conclude, as shall be proper, against the authors or accomplices of the abstractions which they pretend to have been committed on board of the two ships, and generally under all the reservations of right;

Having seen the procès-verbal of the capture, and of the burning of the American ships *Dolly* and *Telegraph*, which occurred at sea on the 29th November and 6th December, 1811, signed by the Captain, Lieutenant, Ensigns de Vaisseau, (second lieutenants) and purser, (agent comptable,) composing the crew of the frigate *la Meduse*;

Having seen the acts of protest and declaration made before the Consul of the United States at L'Orient, to wit, by Mr. Stephen Bayard, Captain of the ship *Telegraph*, on the 11th January, 1812, and by Mr. William Friat, passenger on board the *Dolly*, and calling himself proprietor of divers merchandise embarked on board of said vessel, dated 29th December, 1811;

Having seen the bills of lading and affidavits annexed to these declarations;

Having seen the conclusions, dated 31st October, 1814, of the Attorney General, before the council of prizes, to whom these claims had been submitted;

Having seen the decision made by this council, on the same 31st

October, 1814, by which it was ordained that, before a decree, the persons composing the crews of the frigates *la Meduse* and *la Nymphe*, should be interrogated upon the different circumstances of said captures;

Having seen the procès-verbal of the interrogatories undergone, on the 13th January, 1815, by Mr. Raoul, captain of the frigate *la Meduse*, and Mr. Crom, at that time boatswain's mate in the same frigate, from which it results, that these captures and burnings took place in consequence of their instructions, which prescribed to them the execution of the Berlin and Milan decrees;

Having seen the decrees, dated, that of Berlin on the 21st November, 1806, and that of Milan on the 23d November and 17th December, 1807;

Considering that it is evident that the ship the *Dolly*, laden with merchandise for Havana, sailed from Liverpool, a port of the English dominion, and that the ship the *Telegraph*, laden with flour at Philadelphia, was destined for Lisbon, at that time occupied by the English troops; and that, since that time, these vessels sailed in contravention of the Berlin and Milan decrees;

Considering that the first public notification which was given of the revocation of said decrees, with respect to the Americans, took place only by the notes inserted in the *Moniteur*, of the 8th of May, 1812, several months after the capture of said vessel, and that, from that time, the captains of the *la Meduse* and *la Nymphe* could not know it; and that it even appears, according to the note dated 12th March, 1812 imputed by the petitioners to the Minister Plenipotentiary of the United States, that, at that time, this Minister himself did not know it;

Having heard our Council of State, we have ordained and do ordain as follows:

Art. 1. The petition of the proprietors and owners of the ships *Telegraph* and *Dolly* is rejected, without prejudging any thing of the reservations inserted in their conclusions.

Art. 2. Our Keeper of the Seals, Minister Secretary of State of the Department of Justice, and our Minister Secretary of State of the Department of the Marine and of the Colonies, are charged, each in what concerns him, with the execution of the present ordinance.

Approved the 29th December, 1819.

LOUIS.

By the King: the Keeper of the Seals, Minister of Justice,

H. DE SERRE.

Copy conform to the minute registered at Paris, the 6th January, 1820, by Billard, who has received 29f. 50c. duty included.

The Secretary General of the Council of State,

HOCHET.

Mr. Gallatin to Baron Pasquier.

PARIS, 15th March, 1820.

SIR: The American brig "Dolly," bound from Liverpool to Havannah and New Orleans, with a valuable cargo, was captured and burnt at sea, on the 29th of November, 1811, by the French frigates "Méduse" and "Nymphe." On the 6th of December following, the same frigates also captured and burnt the American ship "Telegraph," bound from New York to Lisbon, with a cargo consisting principally of flour. Mr. Barlow, then Minister of the United States at Paris, addressed, on the 12th March, 1812, a strong remonstrance on the subject to the Duke of Bassano, then Minister of exterior relations. The death of the American Consul, with whom the captains of the vessels destroyed had left their powers, and the interruption in the communications, occasioned by the war which took place in 1812, between the United States and Great Britain, created a delay in the regular application of the parties, and prevented an immediate decision. The affair in the meanwhile took the usual course, and was transferred, in 1815, from the council of prizes to a committee of the council of state. On the application of the parties, I had the honor, on the 9th of June, 1818, to transmit their *memoire* to His Excellency the Duke de Richelieu, and added such short observations as the case seemed to require.

It was with equal astonishment and regret, that I received, a few days ago, the information that the application of the parties for indemnity, had been rejected by a decision of the council of state, of the 23d of December, 1819, on the following grounds:

"Considérant qu'il est constant que le navire le *Dolly* chargé de marchandises à la destination de la Havane, sortoit de Liverpool, port de la domination Anglaise, et que le navire le *Télégraphe*, chargé de farine à Philadelphie, étoit destiné pour Lisbonne, occupé à cette époque par les troupes Anglaises; et que, dès lors, ces batimens naviguoient en contravention aux décrets de Berlin et de Milan:

"Considérant que la première notification publique qui ait été donnée du décret de revocation des dits décrets à l'égard des Américains n'a eu lieu que par les notes insérés dans le *Moniteur* du huit Mai 1812, plusieurs mois après la prise des dits batimens, et que, dès lors, les capitaines de la *Méduse* et de la *Nymphe* ne pourroient, en avoir connoissance, et qu'il paroît même, d'après la note en date du 12 Mars, 1812, attribuée par les réquérans au Ministre Plénipotentiaire des Etats Unis, qu'à cette époque lui-même ne la connoissoit pas:

"Notre Conseil d'Etat entendu &c."

I must in the first place enter my most solemn protest against this decision, so far as it seems to sanction the Berlin and Milan decrees. These acts were in flagrant violation of the law of nations and of common justice. The United States never acquiesced in them, and have never ceased to claim the indemnity justly due to American citizens for the injuries and losses they suffered by reason of those illegal enactments. But it is unnecessary, on this occasion, to discuss that

question. The owners of the *Dolly* and *Telegraph*, claimed indemnity solely on the ground of the previous revocation of the decrees so far as they applied to the American commerce; and it is to that point alone that I beg leave to call your Excellency's attention.

I am at a loss to understand whether, by the decision of the council of state, it was intended to assert, that the ignorance, on the part of the French captains, of the revocation of the decrees, deprives the parties of their right to an indemnity, or to suggest that the revocation was to take effect only from the date of its publication in the *Moniteur*. Both positions are equally untenable.

The council of state seems to have been unacquainted with the circumstances which attended the revocation of the decrees, and to have supposed that that revocation depended only on the decree of the 28th of April, 1811, and to have considered this last decree, not as the result of a solemn engagement, but as a mere municipal law, or at best, as a gratuitous concession to the United States. It is difficult, even on that supposition, to understand how they could omit altogether to take notice of the clause which gives to the decree a retrospective effect. But it is not on that decree, as an insulated act, that the United States found their demand for indemnity. A recapitulation of the facts connected with the revocation will place the question on its true ground. Permit me first to take notice of an error in the statement of the council.

This error consists in supposing that the Minister of the United States, when writing his letter of the 12th of March, 1812, to the Duke of Bassano was not aware of the revocation of the Berlin and Milan decrees. His ignorance in that respect, had it been real, would not have affected the rights of the claimants; but the supposition, on the part of the council of state, that he was unacquainted with it, is an evident proof that their own decision is founded in error, and must be solely ascribed to the facts not having been properly laid before them. If, in his letter to the minister of external relations, Mr. Barlow did not mention by name the revocation of the illegal decrees, it was because he considered the burning at sea of two American vessels as a wanton outrage, not at all connected with those decrees, which, indeed, did not authorize any such proceeding. It was, perhaps, also because the revocation was so well known, both to him and to the Duke of Bassano, that it had become unnecessary to refer to it on every occasion. That it was thus known, is sufficiently proven by all the correspondence between them, as it stands in the archives of the department over which your Excellency presides. It will be sufficient for me to quote Mr. Barlow's letter to the Duke of Bassano, of the 6th of Feb. 1812, and written therefore, about a month prior to the time at which he is supposed to have been ignorant of the revocation. In that letter (of the 6th of Feb. 1812,) Mr. Barlow complains that the brig *Belisarius* of New York was about to be confiscated as liable to the decree of Milan, and then says: "I know positively that this American vessel left New York, the 17th of June, 1811, seven months after the revocation of the decrees of Milan and Berlin." He concludes

by ascribing the decision to an error of date, by which the year 1810 may have been taken for the year 1811, and asking for a revision of the affair. The Duke of Bassano, in his answer, dated the 16th of March, 1812, informs Mr. Barlow, that the difficulty in that case arose from some irregularity in the ship-papers respecting the ownership, which was a formal contravention of the rules of navigation *generally adopted and established at all times*; that the vessel and the part of the cargo of which the ownership (*pour compte*) was proven, would be given up, and time allowed to establish the fact that the residue of the cargo was American property, *conformably to the ancient rules*.

All the facts relative to the revocation of the decrees are indeed so perfectly known to the French department of foreign affairs, that I thought it unnecessary, in my letter of the 9th of June, 1818, to his Excellency the Duke de Richelieu, to say any thing more on the subject, but barely to refer to it. I had presumed that every explanation on that point which the council of state might require, would be of course supplied by that department; and the following statement of facts is intended for that body, and not for the purpose of giving any new information to your Excellency.

It is well known, that the Government of the United States attempted, by various successive measures, of the most moderate and conciliatory nature, to avert the injuries inflicted on the commerce of their citizens, by the unlawful decrees of France and Great Britain, to obtain redress for those injuries, and above all, to induce both powers to rescind those decrees, and to adopt a course consistent with justice, and with the acknowledged law of nations.

An embargo of fifteen month's duration was succeeded by the act of Congress, of the 1st of March, 1809, which prohibited the introduction of British and French merchandise in the United States, and interdicted their ports to vessels of both nations. To this temporary act, which expired on the 1st of May, 1810, another was substituted, of the same date, by which it was enacted, 1st, That the ports of the United States should be interdicted to the armed vessels of France and Great Britain; 2dly, That if either of those two powers should, prior to the 3d of March, 1811, revoke its unlawful edicts, (which fact the President of the United States should declare by proclamation,) the interdiction thus imposed on armed vessels should cease, in relation to such power; 3dly, That, if the other nation should not, in that case, revoke her unlawful edicts within three months thereafter, the restrictions imposed by the act of the 1st of March, 1809, that is to say, the prohibition to import merchandise, and the interdiction of all vessels, should, at the expiration of three months after the proclamation aforesaid, be revived, in relation to the nation thus refusing to revoke her edicts.

This last act of Congress, of the 1st of May, 1810, having been communicated both to the French and to the British Government, the Duke de Cadore, then minister of external relations, addressed on the 5th of August, 1810, a letter to Mr. Armstrong, then minister

of the United States, at Paris, in which, after having commented on the various acts of Congress, he says, " In this new state of things, I am authorized to declare to you, that the decrees of Berlin and Milan, *are revoked*, and that, *after the first of November*, they will cease to have effect; it being understood that, in consequence of this declaration, the English shall revoke their orders in council, and renounce the new principles of blockade which they have wished to establish, *or, that the United States, conformably to the act you have just communicated, shall cause their rights to be respected by the English.*"

The execution of this revocation depended then on the alternative of two conditions, one of which was not under the control of the United States: but, the other was only, that they should act conformably to what they had already announced to be their determination.

The President of the United States did, accordingly, by his proclamation, of the 2d of November, 1810, declare, that the decrees of France, in question, had been revoked, so as to have ceased to have effect on the 1st day of that month, and that all the restrictions imposed by the act of Congress, of the 1st of May, 1810, were henceforth to cease, in relation to France.

On the same day, the 2d of November, 1810, the Secretary of the Treasury Department of the United States transmitted the President's proclamation to the several collectors of customs, and gave them instructions for the immediate admission of French armed vessels in the ports of the United States, and for the exclusion of all British vessels, and the prohibition of all British merchandise, after the 2d of February, 1811, that is to say, three months after the date of the President's proclamation, in case they, the said collectors, should not, before that day, be officially notified, by the Treasury Department, that Great Britain had revoked her unlawful edicts.

Although both those documents were at the time officially communicated to the French Government, copies are again herewith enclosed.

Great Britain not having revoked her edicts, the interdiction of her vessels and merchandise took accordingly place, on the 2d of February, 1811. It received an additional sanction by the act of Congress, of the 2d of March following, and continued in force till the month of June, 1812, when, in addition to that measure, Great Britain still persevering in her refusal, the United States found themselves at last obliged to declare war against her.

The United States having thus, with perfect good faith, fulfilled the engagement contracted by their act of the 1st of May, 1810, and on which the execution of the revocation of the Berlin and Milan decrees was made to depend, it follows, that the right to demand the complete execution of that revocation from the 1st of November, 1810, and an indemnity in every case where injuries were sustained subsequent to that day, by American citizens, under color of those decrees, is fully established as the result of a positive compact, and

is altogether independent of any subsequent act of the French Government. That right would remain entire, even if that Government had departed from their engagement, and had attempted to revive the Berlin and Milan decrees with respect to the United States. This, however, was not the case.

On the 25th of December, 1810, two letters were addressed, one by the Duke of Massa, Minister of Justice, to the President of the Council of Prizes, the other by the Duke of Gaëte, Minister of Finance, to the Director General of the Customs. Both letters recapitulate the paragraph, already quoted, of the Duke of Cadore's letter, of the 5th of August, 1810, to Mr. Armstrong, and the substance of the proclamation of the President of the United States, and of the circular letter of the Secretary of their Treasury Department, of the 2d of November, 1810. The Director General of the Customs is accordingly informed, that the Berlin and Milan decrees must not be applied to any American vessels that have entered French ports since the 1st of November, or may enter in future. By the letter of the Grand Judge, Minister of Justice, it is ordered that, "in consequence of the engagement entered into by the United States, (the President's proclamation, and the circular of the Secretary of the Treasury) all the causes that may be pending in the Council of Prizes of captures of American vessels, made after the 1st of November, and those that may in future be brought before it, shall not be judged according to the principles of the decrees of Berlin and Milan, but that they shall remain suspended; the vessels captured or seized, to remain only in a state of sequestration, and the rights of the proprietors being reserved for them, until the 2d of February next, the period at which, the United States having fulfilled the engagement to cause their rights to be respected, *the said captures shall be declared null by the Council, and the American vessels restored, together with their cargoes, to their proprietors.*"

It is not irrelevant to observe, that these two letters were immediately made public in France. They appeared even in a Bordeaux newspaper, as early as the 30th of December.

Accordingly, as soon as the restrictions on British vessels and on British merchandise, as announced by the previous acts of the American Government, had actually been carried into effect, on the 2d of February, 1811, and an account of it had been received by the French Government, the American vessels were admitted to entry in the French ports, although they might have been in contravention to the Berlin and Milan decrees; and the vessels which had been captured subsequent to the 1st of November, 1810, by virtue of those decrees, were released in all cases where some other objection, unconnected with those decrees, such as the question of ownership in the case of the *Belisarius*, did not occur.

It was with reference to all these circumstances, that his excellency the Minister of Marine, in a letter of the 30th of November, 1818, to the council of state, stated that the revocation of the Berlin and Milan decrees had been *definitively pronounced* only on the 2d of Feb-

ruary, 1811. His expressions are, "que le Capitaine Raoul, commandant les deux frégates, parti de la rivière de Nantes le 28 Décembre, 1810, n'a pas pu avoir connoissance de la revocation des décrets de Berlin et de Milan, à l'égard des Americains, revocation qui n'a été définitivement prononcée que le 2 Fevrier suivant." Without admitting the correctness of that statement in all its parts, it is at least evident that the minister knew, and that the council of state might have seen, by that letter, that there was some other act besides, and previous to the decree of the 28th of April, 1811, by which the revocation had been already definitively pronounced.

The general admission of American vessels to entry, was announced to Mr. Russell, chargé d'affaires of the United States, by a letter of the Duke of Bassano, of the 4th of May, 1811. To prove that no distinction was made with respect to vessels, in contravention to the Berlin and Milan decrees, it will be sufficient, in addition to the case of the *Belisarius*, to mention that of the *New Orleans packet*.

That vessel arrived from Gibraltar, at Bordeaux, the 3d of December, 1810, and had, besides, been boarded by two public British vessels. She was immediately, for these express causes, seized by the director of customs, as having violated the Milan decree. On the representation of the American chargé d'affaires, and in conformity with the letter of the minister of finances, of the 25th of December, 1810, which has already been quoted, the vessel and cargo were restored to the consignees, on giving bond to pay the estimated value, should it definitively be so decided. And, according to orders given to that effect, the bond was cancelled shortly after the date of the Duke of Bassano's letter of the 4th of May, 1811.

With respect to vessels captured subsequent to the 1st of November, 1810, I can appeal to the records of the court of prizes, for proof, that not a single one was condemned for a contravention to the Berlin and Milan decrees. The archives of this legation, though necessarily defective in that respect, enable me to mention the following vessels, viz.: the *Two Brothers*, *Good Intent*, *Star*, *Neptune*, and *Acastus*, all of which, having been captured and brought into port, for having contravened those decrees, were acquitted and released, in consequence of their revocation. Whether, besides the *Dolly* and the *Telegraph*, there might not be some other case which remained undecided in April, 1814, I cannot positively assert. There is none within my knowledge.

It is material to add, that all the vessels which I have mentioned, were released *before the 8th of May, 1812*, the day on which the decree of the 28th of April, 1811, is stated, by the council of state, to have been published in the *Moniteur*. And your Excellency may have perceived, that, in the preceding statement of facts, I have not alluded to that decree. Indeed, if the council of state, instead of suggesting, that the revocation of the Berlin and Milan decrees was unknown to the minister of the United States, at the time when he wrote his letter of the 12th of March, 1812, had only said, that he was unacquainted with the decree of the 28th April, 1811, I would, whilst shewing, as I have done, that his ignorance in that respect was irre-

levant to the question, have acknowledged the fact to be true. That decree was first communicated to him on the 10th of May, 1812, and did not reach the Government of the United States till the 13th of July following, that is to say, one month after war had been declared against England. It, therefore, had no effect on any of their acts, or any part of their conduct. The compact was complete without it, and rested on the official declarations of the minister of foreign relations, and on the execution of the engagement on the part of the French Government. In what manner that Government chose to announce the revocation to its officers and subjects, was immaterial to the United States. The only point in which they were concerned, was, that that revocation should, according to the engagement, be faithfully carried into effect. And this is the reason why I thought it necessary to shew in what manner it was executed in France. Why the publication of the decree of 28th April, 1811, was delayed, is not known to the United States, and they have no interest in knowing it. The delay cannot affect them, since their rights, founded on compact, are independent of the decree, and would be precisely the same if it had never been enacted.

Had all these facts been brought within the view of the Council of State; had that body been aware, that the revocation of the Berlin and Milan decrees had been the result of an engagement taken by the French government, on a condition which had been faithfully fulfilled by that of the United States; had they been informed that it was thus considered by the former government of France, and that every decision which had heretofore taken place in relation to American vessels, was consistent with the principle that those decrees had ceased to have effect with respect to American commerce, from the first of November, 1810; it is impossible to suppose that the presumed ignorance of that revocation, on the part of the captains of two French frigates, could have been alleged as a reason why the owners of the *Dolly* and *Telegraph* should not be indemnified for the destruction of their vessels and cargoes, more than one year after that date.

That ignorance on the part of the captains may be accepted as a sufficient justification for every part of their conduct, so far as respects their responsibility towards their own government, if that government thinks it proper. That is a point in which the United States have no concern. But that circumstance cannot release the government of France from their engagement with that of America, that the decrees should have no effect after the first of November, 1810, nor from the obligation of indemnifying the American citizens who may, in contravention of that engagement, have sustained losses by the erroneous application of those decrees subsequent to that day.

The government of France, having once entered into that engagement, became responsible for its faithful and complete execution. The solemn promise was made on the 5th of August, 1810, and it became irrevocable, provided the condition attached to it was fulfilled. In postponing the execution till the first of November, an epoch fixed by the French government itself, time was taken, sufficient in its own

opinion, to give the necessary orders, and to ensure the performance of the promise. It became the duty of that government to give instructions to that effect to their tribunals and officers; and they are bound to indemnify, if, through neglect, or any other cause, some of their naval officers were not duly instructed, and American citizens have suffered any injury on that account. The condition annexed to the revocation, as announced on the 5th of August, 1810, was only that the United States should act in conformity with the act of Congress, of the first of May preceding. As there was, of course, the strongest probability that that condition would be fulfilled, and that the revocation would, as in fact it did, take effect on the first of November following, orders ought to have been immediately issued, to prevent, after that day, any act violating the engagement. It may be added, without attaching much importance to the fact, that the President's proclamation and the Treasury circular of the 2d November, 1810, were communicated by Mr. Russell to the Duke of Cadore, on the 17th of December following; that is to say, eleven days prior to the sailing of the *Medusa*.

In the case of the *Dolly* and *Telegraph*, there are two distinct acts committed by the Captains of the French frigates—the capture of the American vessels, and afterwards their destruction. In all cases of capture, the United States have a right to demand a trial by a competent tribunal. According to the present jurisprudence of France, that tribunal appears to be the Committee of the Council of State, known by the name of “Comité du contentieux.” The first question they had to decide was, whether the capture was legal or not. On that question there could not have been any hesitation. The series of the acts connected with the revocation, the decree itself, of the 28th of April, 1811, all the former precedents, all the decisions of the council of prizes, left not the smallest doubt that the Berlin and Milan decrees had ceased to have effect, on the 1st of November, 1810, and that any subsequent capture, founded on those decrees, was illegal and null. Indeed, there would have been no difficulty, if the Captains of the frigates, ignorant of the revocation, had only captured the *Dolly* and *Telegraph* and sent them into port for adjudication. Those two vessels would have been acquitted and restored, as were all the other American vessels that were brought into French ports, under similar circumstances. Instead of pursuing this course, the French Captains plundered and burnt the ships. This act renders the restoration impracticable; but, the capture being illegal, it does not, at least, release the French Government from its responsibility.

A belligerent has a right to capture, and, at his discretion, to destroy, the vessels of the enemy. With respect to neutrals, he can only capture, and send in for adjudication, the vessels pursuing a trade contrary to the duties imposed, on neutrals, by the law of nations. It is already sufficiently hard on them that the decision should be made by a tribunal of the belligerent power. But the benefit of such trial was never denied to them, not even by the Berlin

and Milan decrees. Those decrees declared, in violation of the law of nations, neutral vessels liable to capture and condemnation for pursuing a legitimate commerce; but they did not change the course of proceedings with respect to the mode of decision. A trial and condemnation, by a competent tribunal, were still necessary. Navy officers, by the law of nations, never are, and even by those decrees were not, authorized, in any case, to burn at sea the vessels of a nation at peace. Such an act is a wanton outrage, wholly unjustifiable, and for which, if at any time committed, even under a plea of necessity, the nation is always responsible. The most aggravating circumstance of the whole case cannot, in any view of the subject, be adduced as a reason to defeat the right of the parties to an indemnity. That indemnity is equally due by the Government of France; that government is equally responsible for the outrage committed by the officers of its navy, whether the act be owing to neglect, in not issuing in time the necessary orders, to improper or unauthorized conduct on the part of the officers, or to any other cause.

Having laid before your Excellency what, I trust, will be considered a conclusive statement of facts, it grieves me to be compelled to say, that the decision of the Council of State, of the 19th of December last, is the first positive act by which the Government of France seems to have considered itself as released from the solemn obligation contracted with the United States, "That the Berlin and Milan decrees were to cease to have effect, after the 1st of November, 1810." And it has afforded me great relief to find, on the face of that ordinance, irrefragable proofs that it must be ascribed to an unintentional error, arising from the Council not having been put in possession of all the material facts connected with the case.

I apply, therefore, to your Excellency, with perfect confidence in the justice of his Majesty's Government, and have the honor to request, 1st, that you will be pleased to lay the subject before his Majesty, in order that the ordinance, of the 23d of December last, may be rescinded, and a revision of the affair ordered. 2dly, that when brought again before the Council of State, you will have the goodness to have all the facts relative to the revocation of the Berlin and Milan decrees fairly laid before that Body, in order that the owners of the Dolly and Telegraph may receive the indemnity justly due to them for such a wanton and unjustifiable outrage as the destruction of their vessels and cargoes.

I request your Excellency to accept the assurances, &c.

ALBERT GALLATIN.

HIS EX. BARON PASQUIER,

Minister of Foreign Affairs, &c. &c. &c.

No. 143.

Extract of a letter from Mr. Gallatin, Envoy Extraordinary and Minister Plenipotentiary of the United States to France, to Mr. Adams, Secretary of State, dated

PARIS, 27th April, 1820.

“Mr Pasquier has also informed me that he had referred to the Minister of Justice my remonstrance, of the 15th of March last, against the decision of the Council of State, in the case of the *Dolly* and *Telegraph*. This is a very unusual course in an affair, where our rights are founded on a positive agreement between the two countries—an agreement entirely political, and in which the Minister of Foreign Affairs was the organ of the French Government.”

No. 147.

Extract of a letter from Mr. Gallatin, Envoy Extraordinary and Minister Plenipotentiary of the United States to France, to Mr. Adams, Secretary of State, dated

PARIS, June 9th, 1820.

“Being yet without instructions, on the subject of our claims for indemnity, I acquiesced in Mr. Parish’s wish to lay the Antwerp cases before the Department of Foreign Affairs, and have the honor to enclose the copy of a letter which I wrote to Mr. Pasquier on that subject.”

In duplicate of Mr. Gallatin’s No. 147.

PARIS, 9th May, 1820.

SIR: I had the honor, on the 11th of February, 1819, to transmit to his Excellency General Dessolle, a memorial of Mr. David Parish, to H. E. the Minister of Finances, relative to certain American vessels and cargoes, sequestered at Antwerp, in the beginning of the year 1807; and I now beg leave to transmit a new application of that gentleman, addressed to your Excellency. Permit me to add a few observations to those contained in those memorials, and in my letter of the 11th of February, 1819, to General Dessolle.

The only extraordinary French decree in force, when those vessels arrived at Antwerp, was that of Berlin, dated the 21st November, 1806. Some of its enactments were unjust, and contrary to the law

of nations: yet it made merchandise liable to confiscation, only in case of its being British property, or of the manufacture or produce of Great Britain, or her colonies. With respect to vessels coming from England, it was by that decree only declared that they should not be received in French ports; and such vessels were, with their cargoes, made liable to confiscation only in case they should have contravened that provision by means of a false declaration. It was not until the 17th December, 1807, that, by the still more arbitrary decree of Milan, neutral vessels, which might have been searched by an English ship, or sent to England, were declared to be denationalized, and good prize.

The vessels in question, were bound from the United States to France; but had, on their passage, been sent forcibly to England, and were afterwards released. They do not seem to have come, in any shape, within the purview of the Berlin decree. But even if, considered as coming from England, within the meaning of the act, as they had not concealed the fact by any false declaration, the utmost penalty to which they were liable by that, or any other existing decree, was not to be received in a French port. Their being, nevertheless, admitted and sequestered, instead of being sent off, was the act of the French Government. They were detained, as will immediately be shown, only in order to ascertain whether there was not some other contravention of the decree; whether the cargo, or some part of it, was not British property. Unless this can be established, or that they had made a false declaration, the simple fact of their having arrived at Antwerp from an English port, did not make them liable to confiscation.

By an imperial decision, of the 2d July, 1808, the cargoes, being of a perishable nature, were ordered to be sold, and the proceeds to be placed as a deposit in the *caisse d'amortissement*; and an inquiry was directed to be made in order to ascertain whether the property was not British. H. E. Baron Louis, to whom, as Minister of Finances, the memorial of Mr. Parish, above mentioned, had been addressed, wrote to him, on the 22d of May, 1819, that the proceeds of the sales had been withdrawn, by superior orders, from the *caisse d'amortissement*, and paid into the public treasury; and he adds, that they were thereby definitively acquired by the state. He has communicated neither the date nor the tenor of those orders. That he should have considered them as precluding him, on his own authority, and without the sanction of Government, from ordering the money to be repaid to the American owners, may be understood; and it is presumed that this was his meaning. He cannot have intended either to pronounce on the merits of the case, or to maintain the untenable position, that the transmission of the money from one public chest to another could have affected the rights of the parties. Its being expended for public purposes, instead of remaining as a deposit, is a proof of the wants of Bonaparte, but is not a decision on the case. A definitive confiscation, even under the imperial *regime*, could only take place with the usual forms, and by virtue of a direct and positive act to that

effect. All that was done by that Government, with respect to this property, was the order of sale, the order to place the proceeds in some public chest, and the inquiry relative to the ownership. No final decision, no condemnation, has ever taken place.

It happens even that, with the exception of these vessels, and of four others, consigned to Mr. Ridgeway, the American consul at Antwerp, all the other cargoes sequestered in that port, under similar circumstances, were delivered to the owners, and that the conditional bonds they had given were returned to them. The principle has thus been decided in favor of the claimants, and nothing remains but to apply it to their special case.

Having received special instructions from my Government in regard to this claim, it is in its name that I beg leave to call your Excellency's attention to Mr. Parish's memorial, and that I ask for that decision which justice requires, and which has been but too long protracted.

Your Excellency will perceive, that this decision does not depend on the question of the legality or illegality of the Berlin and Milan decrees, and that I have argued as if those acts had been valid. Although they cannot certainly be admitted as such by the Government of the United States, it is a question unconnected with the present case, and which is reserved for a future discussion.

I request your Excellency to accept the assurances, &c.

ALBERT GALLATIN.

His Excellency Baron PASQUIER,

Minister of Foreign Affairs, &c. &c. &c.

Extract of a letter from Mr. Adams to Mr. Gallatin, dated

DEPARTMENT OF STATE,

Washington, 31st March, 1821.

"Mr. Archibald Gracie has again solicited some special interposition of this Government, to press that of France for an adjustment of his claim. He considered it as standing upon grounds so clear and incontrovertible, that the French Government cannot ultimately resist the equitable obligation of providing for it.

The Government of the United States cannot undertake to discriminate between the comparative merits of the claims of their citizens upon the Government of France. It asks justice for them all; it asks no more than justice for any. More than two years since, the claims of Mr. Gracie, and all the Antwerp cases, were recommended to your special attention, in the presumption that, standing on ground peculiarly imposing on the French Government, it would not be able to resist them, and that success in those cases would pave the way for it in all others. It is in this view, that is, by pressing this, and the Antwerp cases generally, the other cases would not only not be injured, but benefitted, that your attention to them is suggested. The

force of example, added to the other powerful considerations in their favor, might do much. But that is left altogether to your judgment, aided as you are by all the lights belonging to the subject; and, unless you shall be satisfied that the proposed pressure will have the good effect contemplated, it is expected that you will of course decline it."

Mr. Adams to Mr. Gallatin.

DEPARTMENT OF STATE,

Washington, 29th June, 1821.

SIR: I have the honor of enclosing, herewith, a copy of a letter received at this Department some time since, from Mr. Connel, as agent for sundry insurance companies in Philadelphia, having claims upon the French Government; upon which I would refer you to the letter which I lately wrote you concerning the case of Mr. Gracie's claim. These gentlemen appear to have received recent information, upon which they place some reliance, indicating on the part of the French Government a disposition more favorable to claimants upon their justice, than had been previously manifested. Should any prospect of that nature be perceived by you, your own disposition to make it available for the benefit of the sufferers, will, itself, serve the purpose of a standing instruction.

I am, with great respect, Sir,

Your very humble and obt. servant,

JOHN QUINCY ADAMS.

No. 193.

Extract of a letter from Mr. Gallatin, Envoy Extraordinary and Minister Plenipotentiary of the United States to France, to Mr. Adams, Secretary of State, dated

PARIS, November 15, 1821.

"Mr. de la Grange, the lawyer generally employed in American cases, having requested me to transmit to the minister of foreign affairs a copy of his memoir in the appeal of Richard Faxon, now pending before the council of state, for indemnity on account of a seizure made at Santander, in the year 1812, I addressed to Mr. Pasquier, on the 31st ultimo, a note on the subject, copy of which, as well as of the said memoir, I have the honor to enclose. You will perceive, that I took that opportunity of reminding the minister of the case of the 'Dolly' and 'Telegraph,' on which it does not seem that the minister of justice has yet made any report."

[TRANSLATION.]

Mr. Gallatin to Baron Pasquier.

PARIS, October 31, 1821.

SIR: I have the honor to transmit to your Excellency, under this cover, a memorial addressed to the King, in his council of state, for Richard Faxon, a citizen of the United States, who complains of a judgment of the board of finances, approved by his excellency the minister of the same department.

The question is, of a seizure made by the French customs, in 1812, at Santander, in the stores of Joachim Munios, of a quantity of sugars, belonging to said Faxon. The board of finances seems to have dismissed his claim, from supposed presumption, that he was not the proprietor; and your excellency, by glancing over the memorial, will be convinced, that there can be no doubt in this regard.

But the board has, if I may be allowed the expression, reserved a subsidiary question, that of knowing if a citizen of the United States could pretend to any indemnity, for having suffered, in this part of Spain, the application of the laws of France, which then aimed at colonial goods. Ignorant of what laws the board speaks, I can only observe, generally, that none could ever give the right of seizing, without indemnity, upon the known property of a citizen of the United States, deposited, for three years, without having been there molested, in the stores of his correspondent.

As it is, however, possible, that the laws in question may be no other than the Berlin and Milan decrees, and the different imperial or administrative decrees which have been the consequence of them, I pray your excellency to be pleased to lay before the council of state the correspondence between the ministers of the Government, from that time, and those of the United States, as well as the other documents, which prove that these decrees had been repealed, in regard of the United States, long before the seizure of the sugars of Mr. Faxon.

I ought also to remind your excellency of another affair, more important for the principles which apply to it, but which depends, likewise, upon the date of the repeal of these two celebrated decrees. I had the honor to address to you, under date of 15th March, 1820, a very long note on the subject of the decision of the council of state, by which the claim of the proprietors of the vessels *Dolly* and *Telegraph*, burnt on the open sea by two French frigates, in November and December, 1811, was rejected. This decision could only have taken place because the documents, proving the date of the repeal, had not been laid before the council. But it is supported by considerations which can only produce the most troublesome effects. I can assure your excellency, that the revision is of high importance, and I hope that you will judge, that a delay, which is already upwards of twenty months, ought to be no farther prolonged.

I pray your excellency to accept the assurance, &c.

ALBERT GALLATIN.

No. 200.

*Extract of a letter from Mr. Gallatin to the Secretary of State, dated
PARIS, 14th January, 1822.*

“I have the honor to enclose the copy of a note which I wrote on the 10th inst. to the Minister of Foreign Affairs, on the subject of the Antwerp claims.”

PARIS, 10th January, 1822.

SIR: I had the honor, on the 9th of May, 1820, to transmit to your Excellency's predecessor, a memorial of Mr. David Parish, relative to the American cargoes sequestered at Antwerp in the beginning of the year 1807, and to add some observations in support of the claim. Twenty months having since elapsed, a time amply sufficient to make every inquiry respecting the merits of the case, I have been instructed by my Government to renew the application, and to call, in the most forcible manner, the earnest attention of His Majesty's Ministers to that subject.

In urging a decision on this reclamation, separately from others, there is not the most distant intention of abandoning the other claims of citizens of the United States for the indemnities so justly due to them. But it is time, after so many delays, to obtain at last a decisive answer, and to ascertain the determination of the Government of France in that respect. And this claim has been selected because it is altogether free of any of the objections, however unfounded these may be, which have been suggested in regard to other cases.

It is not, in the first place, necessary in this instance, to discuss questions connected with the illegality of any of the decrees contravening the law of nations, which were issued by Bonaparte. The vessels in question had not violated any of those decrees; their cargoes were not liable to confiscation by virtue of any provision contained in any edict in force at the time of their seizure.

And, secondly, not only is the case entire; not only has there been no trial or condemnation of the cargoes; but the principle that they were not liable to confiscation has been settled, by the decisions of Government in analogous cases, and even with respect to portions of the identical property for which indemnity is now claimed.

I trust that I will be able to establish both these positions, to your Excellency's satisfaction.

The only extraordinary decree of the French Government affecting the navigation of neutral nations, in force at the time of the arrival of the vessels alluded to in a French port, was that issued at Berlin, the 21st of November, 1806.

It was, by that decree, amongst other provisions, declared, 1st, that merchandise belonging to a British subject, or being the produce or the manufactures of colonies of Great Britain, should be condemned as good prize, (Art. 5 and 6,) 2d, that no vessel coming directly from England, or from her colonies, or going there (*qui s'y rendra*) after the known publication of the decree, should be permitted to enter any French port, (Art. 8,) 3d, that every vessel contravening the decree by a false declaration should be seized and her cargo confiscated as British property, (Art. 9.)

During the first months subsequent to that decree, a number of American vessels arrived in France, coming from the United States, but having on their passage been compelled to stop in England, either by British cruisers or by stress of weather. The question arose, whether it was intended by the 8th article of the decree, to exclude only vessels which had gone voluntarily to an English port, or whether it included even those which had been compelled to do it by what is called *relâche forcée*. The words used in the article, *venant directement*, and *qui s'y rendra*, seemed to favor the first construction; and it was clear that if the last was adopted, British cruisers had nothing to do but to stop for a few days every neutral vessel bound to France, in order to destroy her external commerce. These, however, were questions for the French authorities exclusively to decide. It was altogether in their power to have decided that the vessels in question were embraced by the decree, and to have refused to admit them in any port. The Minister of Finances, impelled by what was evidently for the interest of the French commerce, allowed the cargoes to be provisionally landed and deposited in the public stores until the decision of Bonaparte, on the question was known; and permitted, also, that they should be delivered to the consignees on their giving an obligation to pay to the custom house the estimated value thereof if so ordered by that decision. It was, therefore, by the act of the French Government, that the vessels landed their cargoes instead of being ordered off. And that provisional construction continued in force till the 4th of Sept. 1807, when the Director-General of the Douanes announced, by a circular, "That the Emperor had decided that the 8th and 9th articles must have their full and entire execution, and that no vessel which had touched in England, or been conducted there, could be admitted." "Thus," added the Director, "the immediate retrogradation of those vessels shall be required, whatever be the alleged causes of superior force, and the documents produced in proof thereof. Those which, by a false declaration, may conceal the fact, of having touched in England, and succeed in thus entering our ports, shall be seized, and the vessels and their cargoes shall be proceeded against in the form prescribed, by the decree, in relation to English property." In conformity with this decision, several American vessels bound to Antwerp, were sent away, amongst which may be mentioned, the "Dragon," and the "Two Brothers," and also the Orozimbo, belonging to one of the owners of the cargoes for which indemnity is now claimed, although her cargo had already

been actually landed. It would have been fortunate for the owners of the merchandise, which is the object of this reclamation, that this decision should have been made from the first, or that when made it should have been applied to their property.

Amongst the American vessels, arrived from the United States in French ports, in the year 1807, prior to the decision of the 4th of September, and which had been compelled to touch in England, seven came to Antwerp, consigned to two American houses, the Bordeaux Packet, Helena, North America, and Diamond, to that of Mr. Ridgway, and the Perseverance, Hiram, and Mary, to that of Mr. Parish. The consignees declined availing themselves of the option offered by the French authorities to receive the cargoes, on giving bond for their value, to abide by the final decision of Bonaparte. (a) They preferred that the cargoes should remain in the custom-house stores subject to that decision. Their motive was obvious.

It was only by the subsequent decree of Milan, of the 23d November, 1807, that it was enacted, "That all vessels which, after having touched in England, might from any motive whatever enter the ports of France, should be seized and confiscated, as well as their cargoes, without exception or distinction of produce or merchandise." The only causes of confiscation by the Berlin decree, were, concealment of the fact of having touched in England; and the merchandise being either British property, or the produce of England or of her colonies. It was known to the consignees, had already been acknowledged, and was further substantiated by a subsequent inquiry, that every part of the cargoes belonged to American citizens, and that no part was the produce of Great Britain or of her colonies. It was equally known, and has never been denied, that the captains of all the seven vessels had, on their first arrival, made no concealment; that they had all made true declarations of the compulsory touching in England. (*relâche forcée*.) The expected imperial decision could, therefore, only apply to the doubtful question, whether the vessels and cargoes in that predicament were embraced, or not, by the article of the decree which forbade, in general terms, the admission of vessels that had touched in England, whether the cargoes in question, should be admitted or sent away. In case the decision should be that the vessels were, notwithstanding the *relâche forcée*, included in the article of the decree, and that the cargoes were inadmissible, they might, by remaining in the public stores in their original state, be sent out of France, and the decision be strictly complied with. But if, instead of that, those cargoes were sold, (and the consignees could have had no object in receiving them, but that of selling them), the exportation could not have taken place in conformity with the decision; and the consignees, unable to comply with it, might have been compelled

(a) To this there were two exceptions, the consignees having subscribed obligations, 1st, for a small quantity of potash, (about 15,000 francs in value,) received and sold by them on the first arrival of the vessels; 2dly, for the value of some of those vessels, in order to enable them to leave the port. The others were permitted to depart without the bond being required.

to pay the amount of the bond, which would have been tantamount to a confiscation of the property.

The decision of the 4th of September 1807, being made only prospective, the consignees at first hoped, that the cargoes of the seven vessels previously arrived, would be admitted to be sold for home consumption, and accordingly delivered to them. But when they found themselves dissatisfied in that respect, adhering to the same line of conduct which they had pursued, not to depart from the enactments of the Berlin decree, they applied, on the 22d of March 1808, to the Director General of the Douanes, and on the 7th of April ensuing, renewed the application, both to him and to the minister of Finances, stating that the steps they had taken to obtain the definitive admission of that merchandise having been fruitless, and the goods, especially the potash, rice, brown sugar and cochineal, becoming gradually damaged in the entrepôt, they now asked the permission to export the merchandise to a foreign country, and that in conformity with the decree of the 21st of November 1806.

In answer to that petition, Bonaparte ordered, by a decision of the 2d of July, 1808, that the cargoes should be sold, and the proceeds deposited in the caisse d'amortissement, and that an inquiry should be made on each of the vessels which had brought in the cargoes, in order to ascertain whether the owners were not British. On this decision it is only necessary to observe, that it corroborates what has already been stated, and was, indeed, evident, that no concealment having been made by the captains of their *relâche forcée* in England, no other cause or pretence for confiscation could be, or was alleged, than the apprehension, that the property was British, or of British origin.

To the sale of the cargoes for the purpose intended, the consignees did of course object; and they succeeded in preventing it for two years. But to that part of the decision which ordered an inquiry, they cheerfully submitted, and communicated all the documents, papers, and letters, connected with the vessels and their cargoes. A severe scrutiny took place, the result of which, was altogether favorable, it being proven, in the clearest manner, that the cargoes were exclusively owned by American citizens. Of their origin, there does not appear to have ever existed any doubt.

The merchandise, notwithstanding the result of this inquiry, was not restored to the consignees. By a decree dated at Ebersdorf, the 29th of May, 1809, 780 barrels of potash and pearlash, making part of the cargoes of the *Perseverance* and *Mary*, were put at the disposal of the Minister of War, and the estimated value directed to be paid by him in the caisse d'amortissement. That portion of the cargoes was accordingly taken from the entrepôt and delivered to that department, having previously been valued at near 450,000 francs, notwithstanding a deduction, made on account of the damages arising from the long detention in the public stores. Finally, the whole of the residue of the cargoes was sold in June, 1810, by virtue of an imperial decision, of the 4th of May, of that year. It is asserted, that

by virtue of an order subsequent to the sales, which has never been published nor communicated, the proceeds of those sales were ultimately paid, in whole, or in part, into the public treasury.

Your Excellency must agree with me, that, from the preceding statement of facts, it evidently follows, 1st. That, as I had stated in the beginning of this letter, there has been in this case no violation of any existing decree, that the cargoes were not liable to confiscation by virtue of any provision contained in any edict then in force; 2d. That the consignees uniformly took those decrees as the basis of their conduct, and committed no act which might impair the rights of the owners of the property; 3d. That, by allowing the cargoes to be deposited in the public stores, until the decision of Bonaparte was known, whether the vessels were, or were not embraced by the article of the decree, which forbade the admission of those which had gone to England, a formal engagement had been contracted on the part of Government, to permit the exportation of the merchandise in conformity with the decree, in case the decision was against its being admitted for home consumption; 4th. That, although nothing could be farther from the views of the Minister of Finances, yet it was solely owing to the doubts he entertained respecting the construction of the Berlin decree, that the cargoes fell in the possession of the custom house; that it was the unforeseen consequence of his act, which was that of the proper French authority in that case, that the above mentioned engagement not having been fulfilled, the owners have, by a flagrant injustice, been to this day deprived of the merchandise and of its proceeds.

The fact that there has been no trial or condemnation of the property is notorious; and I would at once proceed to the decisions made in analogous cases, was it not necessary to take, in the first place, notice of a most extraordinary and unfounded inference, drawn from a fact immaterial in itself, and which, although not officially communicated, has been made known to me by the parties.

Amongst the several applications for indemnity, made at different times, and in various shapes, by the consignees, a memorial had been addressed to the Minister of Finances, by Mr. Parish, which, at his request, I transmitted on the 11th of February, 1819, to Marquis Dessolle. I wrote again to that minister on the same subject, on the 23d of March following, and had requested, that a report intended to be made by the direction of the Douanes to the minister of Finances, might be communicated to me. This was not done: but H. E. Baron Louis, wrote to Mr. Parish on the 22d of May, of the same year, that the proceeds of the sales had been withdrawn, by superior orders, from the *casse d'amortissement*, and paid into the public treasury; and he added, that they were thereby definitively acquired by the state. This inference appeared so preposterous, that, when alluding to it in my letter of the 9th of May, 1820, to H. E. Baron Pasquier, I said, that I presumed the meaning of the Minister of Finances to have simply been, that he considered the orders in question, as precluding him, on his own authority, and without the sanction of Go-

vernment, from ordering the money to be repaid to the American owners.

The assertion having, however, been made in that broad way, I am compelled to refute it. But I beg your excellency to be persuaded, that I do it only in an hypothetical way, and in discharge of my responsibility, and that I do not suppose, or mean to insinuate, that it ever has been, or can be, the intention of his majesty's ministers, seriously, to resort to such an untenable pretence, for the purpose of avoiding the payment of a just debt. I consider the objection, as being the work of a subordinate agent, whose duty it may have been to collect whatever might be suggested against claims on the public treasury, and the communication to Mr. Parish, as only intended to afford him the means of knowing and repelling every such suggestion. For that purpose, the following observations will, it is hoped, be deemed conclusive:

1. It was agreed, by the 22d article of the convention between France and the United States, of the 30th September, 1800 (*b*), which was in full force when the vessels in question arrived at Antwerp, that the established courts for prize causes should alone take cognizance of them; that whenever such tribunal, of either of the parties, should pronounce judgment against any vessel, or goods, or property, claimed by the citizens of the other party, the sentence, or decree, should mention the reasons, or motives, on which the same should have been founded; and that an authenticated copy of the sentence, or decree, and of all the proceedings in the case, should, if demanded, be delivered to the commander, or agent, of the said vessel. By the 10th article of the Berlin decree, the Council of Prizes at Paris was, accordingly, charged to decide on all cases arising under the said decree, in the following words: "Notre Conseil des Prises à Paris est chargé de décider de toutes contestations qui pourront s'élever au sujet des prises qui en vertu du present decret pourront être faites, tant dans notre empire que dans les pays occupés par nos troupes." There having never been any trial, in the cases in question, before the Council of Prizes, there can have been no condemnation of the property, in conformity either with the solemn obligations of the treaty, or with the provisions of the only decree in force at the time, and applicable to those cases (*c*).

2. Independent of any consideration drawn from treaty obligations, or from the provisions of the decree itself, it is equally repugnant to the principles of the law of nations, as generally recognised

(*b*) The convention was to be in force for eight years, from the date of the exchange of the ratifications, which took place at Paris on the 31st of July, 1801.

(*c*) This provision appears to have been omitted in the Milan decrees of the 23d of November and 17th December, 1807. But even then, condemnations took place only by virtue of special and positive imperial decisions to that effect, and were not inferred from an order to pay in the Treasury. Thus, in the case of the *Sally*, condemned under those decrees, the Minister of Finances wrote on the 6th of November, 1810, to the Director General of the Douanes, "J'ai l'honneur de vous informer que par décision du 30 Octobre dernier, Sa Majesté a ordonné la confiscation du navire Américain la *Sally*, cap. M. Brown, ainsi que de sa cargaison, pour cause de deux relaches en Angleterre."

by the civilized world, and to those of the municipal laws of any civilized nation, to consider the order in question as implying the condemnation of the property of the parties, or as, in the smallest degree, affecting their rights. There was not, in this case, even the form of a trial; no hearing of the parties; no notice given to them of any alleged ground for condemnation, or even of any intention to bring them to a trial. Nor was the order alluded to communicated to them, or made public, either in the bulletin of laws, or in any other manner. On those topics it is unnecessary to dwell—it is sufficient to have stated them. I will only observe, that, without publicity in laws or decrees, there would be no guarantee for the rights of individuals: that publication has, therefore, by the laws of every well-ordered country, of France as well as of every other, always been made a necessary ingredient of any judgment or decree affecting such rights, and that the fact of the order, in this case, not having been published, or at least communicated, is alone a conclusive proof that it was a mere administrative order, binding on the public functionaries to whom it was directed, and in no shape impairing or affecting the ultimate rights of the parties.

3. The official reports and acts of Government, since the restoration, are in direct contradiction with the inference attempted to be drawn, that the payment (versement) into the Treasury, or the application to public purposes of funds before deposited there, is tantamount to a definitive acquisition to the state of such funds, and releases it from the obligation of repaying the same. This will be fully demonstrated by the following quotations from the report of the Minister of Finances (Baron Louis himself) of July, 1814.

“La caisse d’amortissement avoit été instituée dépositaire des fonds des cautionnemens,; les consignations judiciaires et plusieurs dépôts particuliers lui avoient été confiés à la charge de les restituer. Tous ces fonds ont été depuis long tems, par les ordres du chef du Gouvernement, employés aux dépenses de l’Etat; Les fonds déposés à la caisse d’amortissement sont, les cautionnemens, ils s’élèvent à la somme de.....(dont elle) n’a actuellement reçu qu’une somme de.....Le surplus a été versé et est resté au trésor pour 88,675,000 francs, &c. Les consignations judiciaires déposés à la caisse d’amortissement s’élèvent à 11,814,000. Les autres fonds en dépôt sont..... total 7,358,000. Les remboursemens sur ces fonds ont été continués, &c.

“Les fonds déposés à la caisse de service montent à 43,000,000. Les remboursemens des fonds déposés ont été fidèlement continués, quoiqu’ils eussent été consommés, &c.

“La nécessité des anticipations les a introduites dès le commencement de chaque exercice, et bientôt elles se sont étendues à tous les fonds que ce ministère (des finances) a pû atteindre, et elles ont dévoré les fonds déposés, &c. L’arriéré du ministère des finances, au 1er Avril, se compose des dépôts consommés, &c.”*

[TRANSLATION.]

*“The caisse d’amortissement was instituted as a depository of the funds of securities; the judiciary deposits, and several individual deposits, were entrusted to it on a

I must here beg leave to observe, that I do not mean to say, that H. E. Baron Louis was inconsistent with himself with respect to the question relative to the proceeds of the Antwerp cargoes. The transaction was probably unknown to him, or not attended to at the date of the report alluded to; or he may, at that time, have already been told, that they made no part of those deposits (*dépôts consommés*) which Government was bound to reimburse. All that concerns me is to refute the inference as made in his letter to Mr. Parish, that such deposits were acquired to the state merely because they had, by superior orders, been withdrawn from a certain *caisse*, and paid (*versés*) in the Treasury. And it follows, irresistibly, from the quotations I have made, that it was the general habit of the head of the Government, at that time, to apply, to the expenses of the state, whenever exigencies required it, every species of deposited funds without regard to their origin, or to the particular chest in which they were deposited; that the proceeds of the Antwerp cargoes would not have been any more respected, had they been nominally left in the *caisse d'amortissement* instead of being transferred (*versés*) into the Treasury; that the funds originally deposited, although withdrawn and expended, (*consommés*) continued to be faithfully reimbursed by Government, and especially that the payment (*versement*) in the Treasury, did not, as is clearly proven in the instance of the *cautionnements*, operate as a release from the obligation of reimbursing the funds thus diverted and expended. I will add, that, although those *cautionnements* are not, from their nature, generally considered as a debt, the payment of which may be required, (*dette exigible*) yet a very considerable portion has actually been reimbursed to the functionaries or persons belonging to territories formerly annexed to France, which make no longer part of it.

4. The Council of State has decided, in an analagous case, that the payment in the Treasury was not tantamount to a condemnation. In January, 1810, the American vessel *Eagle* had been captured within five leagues of the shore, by a French privateer, and conducted to the port of Passage. The captured and captors made a compromise on the subject; but the vessel and cargo were seized, sequestered, sold, and the proceeds paid in the Treasury by virtue of the decrees passed at that time by Bonaparte, under color of reprisals. The

provision of restitution. All these funds were, for a long time, by the orders of the chief of the Government, employed for the expenses of the state; —. The funds deposited in the *caisse d'amortissement*, are the securities—they amount — to the sum of —, (of which it) has only actually received a sum of —. The surplus *has been paid over, and remains in the Treasury*, for 88,675,000 francs, &c. The judiciary deposits, placed in the *caisse d'amortissement*, amount to 11,814,900. The other funds in deposit, are — total 7,358,000. *The reimbursements on these funds have been continued, &c.*

"The funds deposited in the *caisse de service* amount — tot. 43,000,000. The reimbursements of the funds deposited have been faithfully continued, *although they had been expended, &c.*

"The necessity of anticipations introduced them from the commencement of each duty, and they have often been extended to all the funds which this Minister (of Finances) could obtain, and they have devoured the funds deposited, &c. The arrearage of the Minister of Finances on the 1st April, is composed of *deposits expended, &c.*

case was brought before the Council of State, who, on the 20th of April, 1820, ratified the compromise abovementioned, notwithstanding the opposition both of the captured, and of the general direction of the Douanes. The first reason assigned for this decision is in the following words: “*Considérant qu’il n’existe dans l’especè aucun acte qui ait prononcé la confiscation du navire l’Aigle au profit du Gouvernement François.*” This case and that of the Antwerp vessels may differ in many other respects; but the *Eagle* was included in the general, arbitrary, and unjustifiable seizures, known by the name of the St. Sebastian sequestration; and the vessels and cargoes, thus sequestered, are, so far as relates to the particular question now under discussion, precisely in the same predicament as the Antwerp cargoes. They were equally sold, nearly at the same time, and the proceeds were equally, by a similar order, paid in the treasury and applied to public purposes. Indeed, from the comparison of dates, and other information obtained, I may assert, that the identical order by which the proceeds of the Antwerp cargoes were directed to be paid in the treasury, included all the others which had been sequestered; and, amongst them, the St. Sebastian and passage vessels and cargoes, including the *Eagle*. The fact, at all events, of the proceeds of sales in this last case, having, like those of the Antwerp cargoes, been paid into the treasury, is not only notorious, but was within the full knowledge and view of the Council of State, when the above decision was made. For, in the observations laid before it by the Direction of the Douanes, in opposition to the claim of the captors, it is expressly stated “*que c’est en vertu d’ordres émanés de S. M. et ayant pour base le droit de représailles, que le sequestre avoit été mis, la vente effectuée, et le produit versé au trésor.*” In declaring, therefore, that there existed no act which had pronounced the confiscation of the vessel *Eagle* to the profit of the French Government, the Council of State has explicitly and directly decided, that an order issued from Bonaparte, directing the sale of a vessel and cargo, and that the proceeds should be paid in the treasury, was not an act pronouncing the confiscation of such vessel and cargo, or of their proceeds.

Your Excellency will probably think, that it was superfluous on my part, to have accumulated such an overwhelming mass of proofs for the purpose of crushing a mere shadow, which may be dissipated without recurring to any extraneous consideration. In taking for granted the order alluded to by Baron Louis, it must be assumed such as he had stated it, that is to say, as simply directing the withdrawing of the proceeds of sales from a certain chest, and their being paid into the Treasury. Indeed, had there been any thing further affecting the question, in that document, he would not have failed to mention it in support of the inference attempted to be drawn. Such a decree, from its nature, must be strictly construed; it cannot be extended beyond what appears on the face of it, beyond its positive enactments, and be made to say what is not contained in it. Had it been intended, not only to make use of the property for immediate exigencies, but to pronounce its definitive condemnation, there could have been no

motive, since the decree was not to be published, for not inserting in it a positive clause to that effect, as was done in the other cases where condemnation was the object. But, whatever may have been the intention, the omission of such a clause is of itself and alone, conclusive against the gratuitous and unjustifiable assertion, that the order is tantamount to a condemnation. The order in question does not confiscate the property, because it contains no clause to that effect.

The acts and decisions of the government, directly supporting or recognizing the justice of the claim, will now be stated.

All the vessels which arrived, under similar circumstances with those whose cargoes were sequestered at Antwerp, subsequent to the decision of the 4th of September, 1807, and prior to the Milan decree of the 23d of November ensuing, instead of being detained, were refused admittance and sent off. One of them at least, the Orozimbo, was within the power of the Government, and her cargo, which, as has already been stated, was actually landed on account of repairs wanted by the vessel, might certainly have been seized. On the same principle on which she was suffered to depart with that cargo, those of the seven vessels previously detained, should have been allowed to be exported. To admit that she was not liable to seizure, was an acknowledgment that there was no right to sequester and sell those of the other vessels. But there are other cases still more in point.

It was only in the instance of the seven vessels in question, that it was agreed that the cargoes should be deposited in the public stores until the final decision respecting the construction of the Berlin decree was known. The consignees of all the other numerous vessels which arrived during the same period, and under the same circumstances, in the other ports of France, preferred to avail themselves of the option given by the Minister of Finances, to receive the cargoes and to give bond for the estimated value thereof. The obligations (soumissions,) subscribed by the consignees, were in the following form:

Etat des marchandises venues en ce port par le navire —, que nous réclamons du sequestre de la Douane, où elles sont déposées par ordre, &c.

(Ici suit l'énumération et l'évaluation des marchandises.)

" Laquelle somme de — —, nous nous soumettons, avec notre
 " caution solidaire —, représenter au receveur des douanes de
 " —, si la décision de S. M. J. Pordonne, pour cause de la
 " relâche forcée en Angleterre du dit navire —, nous réservant
 " au besoin recours sur que de droit. Fait à —, le —."

Signé " Les consignataires et leur caution."*

[*TRANSLATION.]

State of the merchandise brought into this port by the ship —, which we claim from the sequestration of the custom house, where they are deposited by order, &c.

[Here follows the enumeration and valuation of the merchandise.]

" Which sum of — — we submit, with our security for the whole debt —,
 " to represent to the receiver of the customs of —, if the decision of his Imperial Majesty ordain it, on account of the forced visit in England of said ship —, we
 " reserving in need, recourse to the legal tribunal. Done at —, the —.

" (Signed) The trustees and their security."

The number of cases in which obligations of this kind were given, is known to the French Government, though not to me; but it embraces, as already stated, all the vessels, the seven which came to Antwerp, only excepted, which, having been compelled to touch in England, arrived in French ports, from the publication of the Berlin decree in the latter end of 1806, until the decision of the 4th of September took place.

In no instance whatever, has the payment of any one of these obligations been enforced. In every other instance but that of the Antwerp cargoes, those of vessels precisely in the same predicament, have been sold for the use of the owners, no steps taken to recover the estimated value for which the obligations were given, and, in some instances, at least, those obligations have been positively annulled. Notwithstanding the difficulty of obtaining information on the last point, the parties interested in the Antwerp claims have been able to furnish me with the following extracts of two decisions.

NAPOLEON, &c.

du 20th Septembre, 1809.

La soumission souscrite à la Douane de Marseille par M. M. Aultran Bellier, pour répondre de la valeur de la cargaison du navire Américain l'Elisa, qui avoit été remise à leur disposition, est annulée.

du 16 Novembre, 1809.

Même decrete en faveur de M. Hottinguer, pour la cargaison du navire Americain l'Ann, arrivé à Cherbourg.*

Whatever may have been the motive of Government for not enforcing the payment of those obligations, the omission of doing it in any case whatever, is an absolute recognition, on its part, that there was no ground for confiscation; and the two instances quoted, are sufficient to establish the fact of positive decisions, in cases perfectly similar to that which is the object of the present reclamation.

The same principle has been applied even to a portion of the identical property sequestered at Antwerp, the payment of similar obligations, which, as already stated, had been subscribed, not only for some of the vessels, but also for a small part of the cargo of one of them, having never been enforced.

Finally, indemnity has actually been paid, since the restoration, for a considerable portion of one of the cargoes.

The house of Mr. Parish had, a short time after the arrival of the vessels, sold to Messrs. Fillietaz & Co. of Antwerp, 256 bales of cotton, part of the cargo of the ship Hiram. It being then confidently expected that the merchandise would be delivered to the parties, the

[*TRANSLATION.]

NAPOLEON, &c.

20th September, 1809.

The underwritten recognizance to the Custom House of Marseilles, by M. M. Aultran Bellier, to answer, for the value of the cargo of the American ship Eliza, which was remitted to their disposal, is annulled.

16th November, 1809.

The same decrees in favor of M. Hottinguer, for the cargo of the American ship Ann, arrived at Cherbourg.

sale was absolute, and at the risk of Mr. Fillietaz. He paid the purchase-money, received a proper bill of sale, and became thus vested with all the rights of the original shipper, but without recourse against him or the consignees. He was disappointed in his expectation of receiving the merchandise thus purchased. His cotton shared the fate of the rest, and was sold in the same manner, and at the same time, for a sum exceeding 400,000 francs. The proceeds, undistinguished from those of the other cargoes, were, in the same manner, and under the same order, paid in the treasury. He applied for indemnity, as a subject or resident of Belgium, to the mixed commission, appointed under the treaties and conventions of Paris. His claim was allowed, and placed in the first class, that of cautionnements and deposits (*d*); and he has received, in payment, an inscription of five per cent. consolidated French stock, amounting, in principal, to 495,760 francs, bearing interest from the 22d of March, 1819, together with 10,726 francs in specie, for arrears of interest, after deducting the commission expenses, or charges.

It has now been fully demonstrated, not only that the claim is founded in strict justice; not only that the property was never confiscated, and that there never was any decision to that effect, either in that or similar cases; not only that, on the contrary, there have been positive decisions recognizing the validity of the claim: but, also, that other foreigners, who had become owners of part of it, have been indemnified by virtue of the treaties concluded between his Majesty's Government and foreign powers. Permit me to add, that France has received, and continues to enjoy the benefit of, the money arising from the sales of the cargoes.

That money was paid in the treasury, and applied towards defraying the public expenses of the State. Had it been restored to the legitimate owners, and not thus applied, those expenses would have been exactly the same. The only difference would have been that the large *arriéré*, left unpaid by Bonaparte, would have been still further increased precisely by the sum thus detained from the American citizens. With what good faith the whole of that *arriéré*, without even excepting the expenses of the hundred days, has been liquidated and paid by his Majesty's government, is well known. In fact, unless France sets up two measures, one for her own subjects and all other foreigners, and another for the citizens of the United States, it is impossible that she can refuse discharging this just debt.

I beg leave to apply, not only for that payment, but, also, for a speedy decision. The United States had, from the most friendly motives, yielded to the reluctance to take up the subject of American claims, which was evinced in the year 1817. The objection arising from the state of the finances, and from the enormous amount of the

(*d*) Mr. Mertens, of Bruxelles, formerly a partner in the house of Mr. Ridgway, presented a claim to the same commission, for the whole amount which had been consigned to that house. His application was rejected on correct grounds; because, although himself a subject of Belgium, his house was American, and because they were only consignees, and not owners of the cargoes, the right to which, with the exception of the sale to Mr. Fillietaz, has remained the property of American citizens.

demands pressing at that time on the resources of France, has now happily ceased to exist. Time amply sufficient has, in the mean while, been taken, for every possible investigation of this claim. The parties have already experienced most grievous losses, from the long detention of so large an amount of property. They should not be tortured by further vexatious delays. Justice, when too tardy, often fails in its object. When it is known, as in this case, that such is the nature of the claim that it will ultimately be paid, intriguing speculators are never wanting, who will try to take advantage of the distance and of the necessities of the claimants, to purchase their rights at a depreciated rate. Such attempts, which, even when not actually tainted, never can avoid the suspicion of corruption, it has been my duty to repel, and heretofore with success. I have told the parties to listen to no proposals, to reject every indirect interference, that their claim was indisputable, and must necessarily be allowed. We employ, to attain that object, no other but direct means; no weapons but those of argument. I trust that they will not have been used in vain, when the appeal is made to your known loyalty, to His Majesty's high sense of justice, to those principles of good faith, in discharging the obligations of the state, which in every instance but that of the American claims, have uniformly distinguished his government.

I request your Excellency to accept the reiterated assurances of the distinguished consideration with which I have the honor to be, &c. &c.

ALBERT GALLATIN.

HIS EX. VISCOUNT DE MONTMORENCY,
Minister of Foreign Affairs, &c. &c. &c.

No. 203.

Extract of a Letter from Mr. Gallatin, Envoy Extraordinary and Minister Plenipotentiary of the United States, to France, to Mr. Adams, Secretary of State, dated,

PARIS, 28th January, 1822.

"I had yesterday a conference with the Minister of Foreign Affairs, on the subject of the Antwerp claims. In the course of it, I referred him to my letters to one of his predecessors, of the 9th November, 1816, and of the 22d of April, 1817; to the first, in order that he might have a general view of the nature and extent of our claims; to the other, for the purpose of showing both the cause of the delay which had taken place on that subject, and that we had always considered the reclamations for property sequestered and not condemned, to be of such nature that the claims ought to be liquidated and paid in the ordinary course of business, and did not require any

diplomatic transaction. I then stated, that although our commercial difficulties might have justly claimed the more immediate attention of the two Governments, yet there was this difference between the two subjects, that the last was only one of mutual convenience, each party being, after all, at liberty, though at the risk of encountering countervailing measures, to regulate his own commerce as he pleased; whilst the question of indemnity, for injuries sustained, was one of right. In this case we demanded justice, and I was sorry to be obliged to say, that, notwithstanding my repeated applications, during a period of near six years, I had not been able to obtain redress in one single instance for my fellow-citizens; an observation, which applied not only to cases which had arisen under the former Government of France, but also to wrongs sustained under that of His Majesty: Such result could not escape the notice of my Government, and had accordingly been complained of, in the most pointed manner, in the instructions I had, from time to time, received. There was, indeed, an aggravating and most extraordinary circumstance, with respect to the applications relative to injuries sustained under Bonaparte's Government: Not only had I failed in obtaining redress, but I had not even been honored with an answer. It could not be concealed, that such a course of proceeding on the part of France, had a tendency to impair the friendly relations between the two countries, and might have an unfavorable effect, even in the discussion of other subjects. I therefore, earnestly requested, that he would immediately attend to the reclamation now before him, and no longer delay the decision which we had a right to expect."

"Viscount Montmorency at once answered, that he had read the papers relative to the Antwerp sequestrations, and that he was struck with the justice of the claim: He regretted, he added, that the settlement of this reclamation should have fallen on the present ministry; that a decision had not taken place in the year 1819; that such an objection as that complained of, had, at that time, been raised by the Minister of Finances. This candid declaration was made, he said, in full confidence, that I would understand it as an opinion formed on a first impression, and as being only his individual opinion: he had not yet conferred on the subject with the Minister of Finances or his other colleagues, which he promised to do without delay, and to lay the subject before the King as soon as possible. Speaking of our claims generally, he alluded to the hardship that the King's Government should be made responsible for all the misdeeds of Bonaparte: an observation, to which I did not think necessary to answer, as he spoke only of the hardship of the case, and did not assert that the obligation did not exist."

Extract of a Letter from Mr. Gallatin to Mr. Adams, dated,

PARIS, April 23, 1822.

“In several conversations I had with Viscount de Montmorency, on the subject of the Antwerp cases, he always evinced a sense of the justice of the claim, and a disposition that indemnity should be made, but I have not yet been able to obtain an official answer; and finding that objections, which were not distinctly stated, were still made by the Department of Finances, I asked Mr. Montmorency’s permission to confer on the subject with Mr. de Villèle, in order that I might clearly understand what prospect there was of obtaining justice. This was readily assented to, and I had accordingly an interview yesterday with that minister.

“I found that Mr. de Villèle had only a general knowledge of the subject, and had not read my note of 10th January last, to which I referred him, and which he promised to peruse with attention. It appeared, however, to me, that, although he was cautious not to commit himself, he was already satisfied, from the inspection of the papers in his Department, and without having seen my argument, that the claim was just, and that the ground assumed by Baron Louis, in his letter to Mr. Parish, was untenable.

“His objections to a payment of the claim at this time, supposing that on a thorough investigation it proved to be just, were the following:

“1st. There were no funds, at his disposal, from which the payment could be made; and it was absolutely necessary that an application should be made to the Chambers for that purpose: a demand which would be very ill received, as it had been generally supposed that France was relieved from every foreign claim of that description.

“2d. Such was the amount of wrongs committed by Bonaparte, and the acknowledged impossibility that France could repair them all, that all the European powers, although with arms in their hands, and occupying a part of the country, had consented to receive, as a payment in full, a stipulated sum, which fell very short of the amount of their claims. The payments thus made by France, had therefore been in every instance, the result of an agreement, (d’une transaction) founded on equitable principles, and on an abandonment, on the part of the foreign powers, of a considerable part of their claims. It appeared, to him, impossible, that an application for funds could be made to the Chambers, for the purpose of satisfying American claims, unless it was also the result of a *transaction* of a similar nature.

“3d. Even in that case, the engagement to pay any sum at this time, for that object, would, for the reasons already stated, and for many others arising from the change of Government, appear extremely hard. The only way to render it palatable was, that it should be accompanied by the grateful information, that our commercial diffi-

culties were arranged in a satisfactory manner. He regretted, therefore, extremely, that the discussion of the two subjects had been separated, one being treated in the United States, and the other here; and he asked, whether it was probable that the result of the negotiation at Washington, would be known at Paris before the next session of the Chambers, which is to take place in June next.

“I must say, that these observations did not appear to be made with an intention of throwing new obstacles in the way of an adjustment of our claims, but for the purpose of stating the difficulties which the Government would have to encounter, in any attempt to effect that object. It was not the less necessary to reply to the suggestions thus made: and I observed, with respect to the delays which had taken place, that they were to be ascribed solely to the French Government. It was in consequence of the determination of the Duke of Richelieu, and I referred to my letter to him of the 22d of April, 1817; it was against my opinion, and notwithstanding my strong remonstrances, that the subject had been postponed, and that provision was not made for our claims at the same time as for those of subjects of the European powers. But, I had taken care to remind the Duke of Richelieu, when the communication for the last object was made to the Legislative Body, that the American claims were not included in the settlement; and he had accordingly expressly stated in that communication, that the sum, to be voted, would discharge France from all demands, on the part of the subjects of the European powers. This was so well understood, that a subsequent grant of seven millions had been voted for the purpose of discharging the Algerine claims. Ours, alone, remained unsettled; and the Chambers must have expected, and could not, therefore, be astonished, that an application for that object should also be made to them.

“As to the propriety of a convention, for the general adjustment of the claims of American citizens, I informed Mr. de Villèle, that this was precisely what the United States had asked; and I referred him to my note of the 9th of November, 1816, which, to this day, remained unanswered. The extraordinary silence of the French Government was, at least, a proof of its reluctance to adopt that mode of settlement, and there was an intrinsic difficulty in what he called a transaction. The United States could have no objection to a partial admission and reimbursement of the claims of their citizens; but, they would not, in order to obtain that object, sacrifice other reclamations equally just, and give that general release, which France was desirous to obtain, in consideration of that partial payment. Under these circumstances, it was a natural, and, perhaps, the most practicable, course, to press a settlement of those claims which, it might be presumed, she intended ultimately to pay: To repel this, on a plea that a convention, embracing the whole, was a preferable mode, was an untenable position, so long as our overture, having the last object in view, remained unanswered.

“After having expressed my sincere wishes, that an arrangement of our commercial difficulties might soon be effected, and having shewn,

from a recapitulation of what had taken place at the time, that the transfer of the negotiations, for that object, to Washington, was owing to the French Government, I stated that there was no connection, whatever, between that and the subject of our claims, and that even when discussed at the same place, they had always been treated distinctly. Our reclamations were of much older date, and not to speak of the former Government of this country, they had, since the restoration, been pending near four years, before any discussion of our commercial relations had commenced. I was ready to acknowledge, that it would be, at any time, an unpleasant duty for His Majesty's Ministers to be obliged to ask funds for the purpose of repairing the injuries sustained, during a former period, by the citizens of a foreign nation; and I was sensible that the task would be more easy after the settlement, than during the existence of other difficulties. But justice, and our perseverance, on which he might rely, required that the duty, however unpleasant, should, at some time, be performed: and I was the less disposed to acquiesce in new and vexatious delays, on the ground alluded to, because the result of the negotiations was very uncertain: The delay, in that respect, was solely due to the French Government: they had thrown great obstacles in the way of an arrangement, by blending other subjects with that immediately to be attended to; afterwards, they became sensible, in the latter end of September last, that it was necessary to send new instructions to Mr. de Neuville. I had, in the month of October, made every representation, and given all the explanations, which could be necessary; yet, the instructions to Mr. de Neuville, were not, as I understood, sent till late in January, and had not yet, I believed, been received on the 12th of March. The success of the negotiation depended on the nature of those instructions, with which I was not acquainted. If they produced no favorable result, the consequence would only be, that the commerce between the two countries would be lessened, and flow through indirect channels; probably, to our mutual loss, and to the profit of the British manufacturers and navigation: But, however this might be lamented, it was only a question of policy; each of the two nations had a right to regulate her commerce, as in her opinion best suited her interest. But, with respect to our claims, it was a question of right, the consideration of which, ought not, and, could not, be abandoned or postponed, even if the commercial relations should continue to be less extensive and less advantageous than they had formerly been, or might again become, in case a satisfactory arrangement, respecting the discriminating duties, was made; whether the result of the negotiation would be known here in June, it was, of course, impossible for me to say.

"Mr. de Villèle, having taken a memoranda, and promised to read the notes to which I had alluded, asked me, whether there was any difference between Mr. Parish's claim, (meaning the three vessels consigned to his house,) and that for the four other Antwerp ships? to which I answered, most decidedly, in the negative. He then, having the decree of 22d of July, 1810, before him, inquired, in what

consisted the difference between the Antwerp claims, and those for other property sequestered and embraced by the same decree, viz: the St. Sebastian seizures, and the vessels given up by Holland. I answered, none, whatever, in substance, and that the reason why a specific application was made for the Antwerp claims, alone, in my letter of the 10th January last, was, that having already demanded indemnity for all the claims, particularly in my note of 9th November, 1816, the claimants, who relied on the exertions of their Government to obtain redress, had generally thought it unnecessary to make separate applications: Mr. Parish, however, being on the spot, had urged a special decision in his case, and my Government having, for the reasons already stated, acquiesced in that course, the Antwerp claims were, in that manner, first presented to the consideration of that of France. But, I had expressly stated in my note, that this was not, in any way, to be construed as an abandonment of their claims, equally just, although their features might not, in every respect, be precisely the same. Between the Antwerp, and the other claims for property sequestered and not condemned, I knew none but merely nominal differences. The St. Sebastian vessels, and cargoes, had been seized and sold under an untenable and frivolous pretence, that of retaliation, to which a retrospective effect had been given: The Antwerp cargoes had been seized and sold, without any pretence whatever being assigned for it: In neither cases had a condemnation taken place: In both cases we had always claimed restitution, or trial, before the ordinary competent tribunal. The right to ask for such trial was, in both cases, derived from the law of nations, and it was for the Antwerp cargoes, also founded on positive treaty stipulations."

Mr. Gallatin to the Secretary of State, No. 212.

PARIS, *May 13, 1822.*

SIR: I have the honor to enclose the copy of a letter I wrote, on the 3d instant, to Viscount Montmorency, on the subject of the Antwerp claims. He has promised an answer: but, as he spoke, though in vague terms, of objections, which it would be better to prevent, rather than to answer, I asked him an interview, which is to take place on Saturday next.

I have the honor to be, with great respect,

Sir, your most obedient servant,

ALBERT GALLATIN.

Mr. Gallatin to the Viscount Montmorency.

PARIS, May 3, 1822.

SIR: I had the honor, on the 10th of January last, to address to your Excellency a note, relative to the American cargoes sequestered at Antwerp. But, although the conversations I had since the honor to have with your excellency, on that subject, had led me to hope that there was a disposition to render a tardy justice to the claimants, the note still remains unanswered.

It is my duty to remind also your excellency, that all the former notes which I had the honor to address to his Majesty's Ministers, either with respect to that reclamation, or, generally, on the subject of the American claims, and particularly the note of the 9th November, 1816, have shared the same fate. That, on a subject so important, no official answer should for such length of time have been given to the earnest and repeated applications of a friendly power; that, where favors are not asked, but justice is demanded, there should have been such a tacit perseverance in avoiding even to discuss the question, must be allowed a most uncommon proceeding in the intercourse between independent nations.

To these considerations I beg leave to add, that two American citizens, with powers from the owners of the greater part of the Antwerp cargoes, have been here for a length of time, one of them a year, for the sole purpose of pursuing and liquidating that claim: and that they both unite in requesting that they may be no longer detained, and that, at all events, a decision may be made in that case.

Permit me, therefore, most earnestly to request from your excellency, that no further delays may take place, and to ask that official answer, which, I have never doubted, would, when made, prove satisfactory to the just expectation of the parties interested.

I request your excellency to accept the renewed assurance of the distinguished consideration with which, &c.

ALBERT GALLATIN.

*Extracts of a letter from Mr. Gallatin to the Secretary of State,
No. 216, dated*

PARIS, June 13, 1822.

"The conference I had, on the 18th ultimo, with Viscount de Montmorency, on the subject of the American claims, turned principally on the difficulties which this Government would find in effecting an arrangement with us. The result of a free conversation on what was practicable, seemed to be, that a definitive agreement was preferable to a partial payment, and that the choice must, in that respect, be between the two following modes: either the payment of a stipulated

sum, in full discharge of the demands of the United States for spoliations, and to be distributed by their Government; or, the reference of the whole case to a joint commission, which, in case of disagreement, would refer the disputed points to a Sovereign, chosen by the two Governments."

"Although Mr. de Montmorency appeared to continue to be personally well disposed, he did not conceal that there were objections in the council of ministers; and he stated, a few days after, that they were inclined to postpone the subject, until the result of the negotiation at Washington was ascertained. I concluded, nevertheless, to insist for an answer to my last note, being satisfied that it would not amount to a rejection, which would have committed hereafter this Government, and that there would be some advantage in obtaining, at least, something more than verbal from them. The answer of the first instant, was accordingly received, copy of which is herewith enclosed. We had so many accounts, of a near prospect of an arrangement being on the eve of being concluded, between you and Mr. de Neuville, that I waited a few days before I made a reply: but, having now heard of the adjournment of Congress, without any Convention having been made, I this day have made the answer, of which I have the honor to enclose a copy."

[TRANSLATION.]

Viscount Montmorency to Mr. Gallatin.

PARIS, June 1, 1822.

SIR: I have received the letter which you did me the honor to write me on the 3d of May, relative to the American cargoes sequestered in the port of Anvers, and to the other claims which you have already heretofore laid before the ministers of the King.

I could have wished, Sir, to have been able to answer you sooner, and, especially, to have been able to welcome your demands; but I was under the necessity of first submitting them to the King, who is engaged in council; his Majesty having nothing more at heart, than to see adjusted, in a proper and satisfactory manner, the affairs of mutual interest for both countries, and thus to multiply between them useful and amicable relations.

The object of your claims is, without doubt, interesting to a great number of individuals; and we have, also, individual claims to make, which are likewise of great interest to the subjects of the King, whom they concern. I would be the first to wish that the Government could be engaged with them; but you are not ignorant, Sir, that there is, at this moment, at Washington, a negotiation which embraces general interests of the highest importance to the navigation of France and of America.

The King's council has judged, that it was better to put off the examination of the individual claims until the negociation upon the general interests was concluded; and, as soon as that shall take place, I shall hasten, Sir, to move in the King's council the examination of the claims, which form the object of your letter of the 3d of May.

I have the honor to renew to you, Sir, the assurance of my high consideration.

MONTMORENCY.

PARIS, *June 13, 1822.*

SIR : I had the honor to receive your excellency's letter of the 1st instant, in answer to mine of the 3d of May, relative to the American reclamations.

It is satisfactory to find, that the unfavorable suggestions heretofore made on that subject are no longer alluded to, and that the only reason assigned for its postponement is foreign to the merits of the claim. I had expected no less from the justice of his Majesty's Government. But this new delay is as vexatious as unexpected; and the grounds on which it is placed appear altogether untenable.

It will appear, by my letter of the 22d April, 1817, to his excellency the Duke of Richelieu, that the magnitude of the claims made upon France by subjects of European powers, was the reason alleged, at that time, for postponing, to a more favorable moment, the discussion of the American claims in question. The Government of the United States, from the most friendly motives, though with great reluctance, acquiesced so far in that delay, as to have abstained from pressing again the subject, until the European claims had been arranged in a satisfactory manner. I made, at that time, as will appear by my letter to the Duke of Richelieu, of the 3d April, 1818, an unavailing effort to obtain a simultaneous and definitive arrangement of the American claims, as most consistent both with common justice and sound policy. And now, when the original cause of the postponement has ceased to exist, when the prosperous situation of the finances of France leaves no ground for the primitive objection, a new cause for delay is sought in circumstances of a subsequent date, and which are wholly unconnected with the subject in question. The consideration of the American claims was adjourned on a presumed plea of temporary inability, or inconvenience, early in 1817; and the commercial difficulties, which it is the object of the negotiation pending at Washington to arrange, did not arise till the year 1819. That the question of indemnity ought not to be made to depend on the fate of that negotiation, is equally evident.

An arrangement, which will restore to the navigation of America and France those advantages now enjoyed, to the exclusion of both, by foreign vessels, and which will have a tendency to extend the

commercial and friendly relations between the two countries, is undoubtedly a most desirable object, and of the highest importance. But it is, after all, a question not of right, but of policy. Either of the two governments may, on that subject, take an erroneous determination: but each of them, should they not, unfortunately, be able to agree on that point, has, ultimately, the right to make its own commercial regulations, exposing itself, without doubt, to countervailing measures, but without giving thereby any just ground of complaint, or disturbing, in other respects, the harmony subsisting between the two nations. In fact, that state of things exists, to a much greater extent, between France and many European powers, particularly with Great Britain. The commerce between America and France, and which may be estimated to amount in value to about eighty millions of francs a year, may still be carried on in foreign vessels, or through indirect channels. Neither country has prohibited the importation of the products of the soil or industry of the other. The only question under discussion, and on which they may happen not to agree, is that of the navigation, that is to say, of the freight of the articles of exchange, which may, in the whole, be worth about three millions a year. But, from the respective prohibitions existing in France and England, it is not merely the navigation, but the commerce itself, between the two countries, which is so nearly annihilated as not to exceed twelve or fifteen millions a year. It has, certainly, in this case, never been suggested, that, because each government follows in that respect its own views, the other questions of right or general policy should, on that account, be suspended; that because a treaty of commerce may appear injurious to either of them, the other would, for that reason, be justified in refusing to do justice in other respects. The question of the indemnity claimed by the United States from France, is one not merely of policy, but of right. It will again revert, and with the same force, in case there should be no arrangement of the commercial difficulties. The foundation on which the demand rests cannot be affected by that result. France must still acknowledge, or deny, the justice of the claim. She is bound, in the first case, to grant the indemnity; in the other, to adduce satisfactory reasons for her denial.

I must beg leave to observe, that the object of these reclamations cannot be, and is not considered by the Government of the United States, as only affecting the interests of private individuals, but as an important subject of public concern. It is not for private contracts voluntarily entered into, or other claims of a similar nature: it is for numerous spoliations, committed not only contrary to every principle of common justice, but in violation of the acknowledged law of nations, and of positive treaty-stipulations; it is for the most flagrant and continued infractions of their rights, as a neutral and independent nation, that the United States demand, that, at least, a satisfactory indemnity should be made to her citizens for the losses thus suffered. The whole series of their public acts, at home and abroad, when those outrageous proceedings took place, and the peculiar cir-

cumstances, (arising from simultaneous aggressions on the part of England,) which alone prevented a resort to war, are facts of such notoriety, as to render it difficult to conceive how the subject can be viewed as of an inferior importance, and as only affecting private interests. If any further proof was required, in that respect, the 10th article of the treaty of the 16th of March, 1810, between France and Holland, might be quoted. Certain American cargoes, which make part of our reclamations, were, by that treaty, put at the disposal of France, "in order," according to the said article, "that the same may be dealt with according to circumstances, and to the political relations between France and the United States."

Not knowing to what reclamations, by subjects of France against the United States, your excellency alludes, I can only observe, that if there are any, respecting which a stipulation should be deemed necessary, it must, of course, be understood, that every such stipulation will, in every respect, be reciprocal, and embrace, on both sides, all reclamations of a similar nature, and for the same period of time.

I request your excellency to accept the assurances, &c.

ALBERT GALLATIN.

His Excellency VISCOUNT DE MONTMORENCY,
Minister of Foreign Affairs, &c. &c. &c.

No. 230.

Extract of a Letter, from Mr. Gallatin, to the Secretary of State, dated

PARIS, September 8, 1822.

"I had, on the 17th ultimo, written to Viscount Montmorency, and again on the 31st to Mr. de Villèle, on the subject of our reclamations, only to remind them, that the late Convention had removed the sole cause assigned for delay. I received, last night, Mr. de Villèle's note of the 3d, of which copy is enclosed."

Mr. Gallatin to Mr. de Montmorency, dated 17th August, 1822.

I beg leave to call again your Excellency's attention to the American claims, for sequestrations and spoliations. The cause assigned by your Excellency, in your letter of the first of June last, for suspending their consideration, being happily removed by the late commercial arrangement, I trust that no further delay will take place, and that, in conformity with the tenor of that letter, your Excellency will be pleased to bring that important subject before the King's council.

I request your Excellency, to accept, &c.

[TRANSLATION.]

Extract of a Letter from Mr. Gallatin to Mr. de Villèle, dated,

PARIS, August 31, 1822.

“Permit me to remind your Excellency, that the three last letters which I had the honor of addressing to His Excellency, the Viscount de Montmorency, are still unanswered. The first, under the date of the 17th current, had, for its object, the different claims of citizens of the United States. The second, of the 20th, contained my observations on the project of an ordinance necessary that the execution of the Convention, of 24th June, may commence on the first of October next. The last, of the 27th, remonstrated against the conduct pursued by the local authorities, in regard to the American vessel the General Hamilton, thrown upon the coast, near Montreuil, on the sea.”

“I eagerly seize this occasion to beg your Excellency to be pleased to accept the assurance, &c.”

[TRANSLATION.]

Mr. de Villèle to Mr. Gallatin, dated September 3, 1822.

You did me the honor, on the 31st of August last, to remind me of several American claims, of which you had formerly apprized the Viscount de Montmorency. It is necessary for me to collect some documents respecting this affair, in order to judge of what consequences they may be susceptible. Be pleased to believe, sir, that I shall attend to them with a good deal of interest and attention.

Accept, sir, the assurances, &c.

No. 233.

Extract of a Letter from Mr. Gallatin, Envoy Extraordinary, and Minister Plenipotentiary, to France, to Mr. Adams, Secretary of State, dated,

PARIS, 24th September, 1822.

“I had yesterday a conference with Mr. Villèle, on the subject of our claims. He expressed his wish that a general arrangement might take place, embracing all the subjects of discussion between the two countries; stated those to be, the reclamations of the United States for spoliations on their trade, those of France, on account of Beaumarchais’s claim, and of the vessels captured on the coast of Africa, and the question arising under the Louisiana treaty; and asked, whether

I was prepared to negotiate upon all those points? I answered that I was ready to discuss them all, but that I must object to uniting the Louisiana question to that of claims for indemnity, as they were essentially distinct; and, as I thought that, after all that had passed, we had a right to expect that no further obstacle should be thrown in the discussion of our claims, by connecting it with subjects foreign to them."

No. 236.

Extract of a Letter from Mr. Gallatin, Envoy Extraordinary and Minister Plenipotentiary, to France, to Mr. Adams, Secretary of State, dated

PARIS, 13th November, 1822.

"I received, on the 8th instant, a letter of Mr. de Villèle, of the 6th, copy of which is enclosed, together with that of my answer of the 12th."

[TRANSLATION.]

Mr. de Villèle to Mr. Gallatin.

PARIS, 6th November, 1822.

SIR: The Convention, concluded at Washington, on the 24th of June last, has removed the obstacles which have, momentarily, impeded the relations of commerce between France and the United States. Although this Convention is only temporary, it holds out the expectation of a treaty more extensive and more durable. It has left leisure proper for discussing and establishing this treaty, upon bases the most conformable to the interest of the two states. Already the communications are re-opened, on both sides, on the most amicable footing: His Majesty has seen, with satisfaction, this happy effect of the arrangement concluded in his name, and in that of the United States.

If any partial difficulties still remain to be removed, they will be easily arranged between two powers, who sincerely wish to establish their relations upon the most perfect equity.

In this spirit of reciprocal justice, I have received the claims which you have done me the honor to transmit to me, and without prejudging any thing in their regard, I must, first of all, sir, remark to you, that France has also claims pending, or to be produced, to the Government of the United States. It would appear agreeable to the interest of the two parties, and to the reciprocity of justice, and of protection, to which the subjects of the two states have equally a right,

that these affairs should be examined and arranged, unanimously, by way of negotiation.

His Majesty's intention would be, that these claims, and the other points in dispute, upon which the Convention, of 24th June, has not been able to pronounce, should be the object of this negotiation, in order to terminate simultaneously, and in a definitive manner, every dispute between the two states, especially in what concerns the duties received in Louisiana, on the French commerce, contrary to the tenor of the 8th article of the treaty of cession.

You will only perceive, sir, in this intention of His Majesty, the most firm desire of leaving, in future, no cause or pretext of misunderstanding, or of complaints between the two states, and on the part of their respective subjects.

If you are authorized, sir, to follow this march, I pray you let me know, and I will hasten to demand of the King the necessary powers to a negotiator, charged with treating with you.

If you were also authorized to sign a consular convention, the same Plenipotentiary would receive powers, *ad hoc*, for also pursuing the negotiation.

Accept, sir, the assurance of the high consideration, &c.

The Minister of Finance, charged, ad-interim,
with the Port Folio of Foreign Affairs.

JH. DE VILLELE.

PARIS, 12th November, 1822.

SIR: I had the honor to receive your excellency's letter of 6th instant.

I have special powers to negotiate a convention providing for the just claims of citizens of the United States against France; as also, for the like claims of French subjects against the United States, with such person or persons as may have a like authority from His Most Christian Majesty.

As minister of the United States I am authorized to discuss the question respecting the construction of the 8th article of the Louisiana treaty, and to give and receive explanations on that subject. But the negotiation on that point having been transferred to Washington, no special powers in that respect have been transmitted to me. I had understood, in the course of the conference I had the honor to have with your excellency on the 23d of September, and had accordingly written to my Government, that it was not intended to insist that that subject should be blended with that of private claims. It is indeed, obvious, that it would be utterly unjust to make the admission of these to depend on the result of a negotiation on a subject with which they have no connection whatever, and the difficulties respecting which are of a date posterior to that of the claims.

All the representations which his majesty's government has made to that of the United States, whether on private or on public subjects, have uniformly been taken into consideration, and received that attention to which they were so justly entitled. In no instance has the Government of the United States declined to open a discussion on any subject thus offered to their consideration by France, or made it a preliminary condition that the discussion should also embrace some other subject in which they might happen to take a greater interest. The question respecting the 8th article of the Louisiana treaty has in particular, been the subject of a voluminous correspondence, in the course of which the arguments in support of the construction insisted on by each party, respectively, were made known to the other. I have, in the mean while, for six years, made unceasing applications to His Majesty's government for the settlement of claims to a vast amount, affecting the interest of numerous individuals, and arising from flagrant violations of the law of nations and of the rights of the United States, without having ever been able to obtain to this day satisfaction in a single instance, or even that the subject should be taken into consideration and discussed. After so many vexatious delays, for which different causes have at different times been assigned, it cannot now be intended again to postpone the investigation of that subject, by insisting that it should be treated in connection with one foreign to it, and which has already been discussed. The United States have at least the right to ask that their demands should, also, be examined and discussed, and I trust that since I am authorized to treat, as well concerning the claims of French subjects against the United States, as respecting those of American citizens against France, a distinct negotiation to that effect will be opened without any further delay.

Permit me, at the same time, to renew to your Excellency the assurances that the United States have the most earnest desire that every subject of difference between the two countries should be amicably arranged, and their commercial and political relations placed on the most friendly and solid footing. They will be ready to open again negotiations on the subject of the 8th article of the Louisiana treaty, and on every other which remains to be adjusted, and will have no objection that the seat of those negotiations should be transferred from Washington to this place.

Although my powers to treat, respecting every subject connected with the commerce of the two countries, may embrace that of a Consular Convention, yet, as this had not been contemplated by my government, I am not at this time prepared to conclude an arrangement for that purpose.

I request your Excellency to accept the assurances, &c.

ALBERT GALLATIN.

HIS EX. COUNT DE VILLELE,

Charged with the Department of Foreign Affairs, &c. &c.

No. 237.

Mr. Gallatin to the Secretary of State.

PARIS, 19th November, 1822.

SIR: I received last night, and have the honor to enclose a copy of Mr. de Villèle's answer (dated 15th instant,) to my letter of the 12th. You will perceive that, without taking any notice of the reasons I had urged, why a distinct negotiation should be immediately opened on the subject of the claims against both Governments, he insists that this shall be treated in connection with the question respecting the construction of the 8th article of the Louisiana treaty. The object is too obvious, to require any comments on my part, and this final decision leaves me no other course than to refer the whole to my Government.

I have the honor to be, with great respect, sir, your most obedient servant,

ALBERT GALLATIN.

[TRANSLATION.]

Mr. de Villèle to Mr. Gallatin.

PARIS, 15th November, 1822.

SIR: You did me the honor to announce to me, on the 12th of this month, that you were authorized to negotiate a Convention, relative to the claims of Americans against France, and to those of France against the United States; but, that you had no power to enter upon a negotiation concerning the interpretation of the 8th article of the Louisiana treaty.

The discussions which have arisen upon this last point, between your Government and the King's Minister Plenipotentiary to the United States, having had no result, and this question being thus left undecided, it is both proper and just to resume the examination of it: it touches upon too great interests not to be treated of with renewed attention, or to be abandoned.

If a new arrangement takes place for the claims, which are still in controversy, it ought to comprehend the whole, and the desire of the King's Government is not to leave any difficulty, any indecision remaining in the relations of the two countries.

It is for the same reason, sir, that I demanded, in the letter which I had the honor to address to you on the sixth of this month, that the negotiation to be opened on the respective claims, should also include a consular convention.

If your powers for discussing these difficult points should not appear to you sufficiently extensive to make it the object of a negotia-

tion, I think, sir, that you will deem it fit to ask of your Government supplementary authority, to come at an arrangement which cannot be of the utility proposed by the two Governments, unless it shall embrace all the questions and the claims which are still in dispute.

I can only refer, sir, on this subject, to the communications which I had the honor to make to you on the 6th of this month, and with which you have, doubtless, acquainted your Government.

Accept, sir, the assurance of my high consideration.

The Minister of Finances, charged, ad-interim,
with the Port Folio of Foreign Affairs.

JH. DE VILLELE.

No. 250.

Extract of a Letter from Mr. Gallatin, Envoy Extraordinary and Minister Plenipotentiary, to France, to Mr. Adams, Secretary of State, dated

PARIS, 27th February, 1823.

“The more I have reflected on the ground assumed by this Government, on the subject of our claims, and on the attempt to connect their discussion with the question arising under the 8th article of the Louisiana treaty, the more I have felt satisfied that it was impossible that the United States should depart from the true construction of that article, and acquiesce in that contended for by France, and that a renewed discussion on that subject would be unprofitable, and lead to no result whatever. As a last, but, I believed, unavailing, effort, I have concluded to express that conviction to the French Government, and have accordingly addressed, this day, to Mr. Chateaubriand, the letter of which I have the honor to enclose a copy.”

PARIS, 27th February, 1823.

SIR: I had the honor to receive his Excellency Count de Villèle's letter, of the 15th of November last, by which, notwithstanding the remonstrances contained in mine of the 12th, his Excellency, being at that time charged with the department of foreign affairs, still insisted that the discussion of the claims of individuals of both nations upon the two governments respectively, should not take place, unless it was connected with a renewed negotiation on the 8th article of the Louisiana treaty.

A conversation I had the honor to have with his Excellency, the

Duke de Montmorency, after his return from Verona, induced me to hope, although he did not encourage any expectations of a different result, that he would, however, again lay the subject before his Majesty's council of ministers. This circumstance, the subsequent change in the department of foreign affairs, and the objects of primary importance which have heretofore necessarily engrossed your Excellency's attention, have prevented an earlier official answer to his Excellency Count de Villèle's letter.

It has, together with the others on the same subject, as he had naturally anticipated, been of course transmitted to my Government. But, on a review of the correspondence of Mr. Adams with Mr. Hyde de Neuville, and with myself, I must express my perfect conviction, that, the subject having been maturely examined, and thoroughly discussed, there cannot be the least expectation that the U. States will alter their view of it, or acquiesce in the construction put by his Majesty's minister on the 8th article of the Louisiana treaty.

It is not my intention, at this moment, to renew a discussion which seems to have been already exhausted; but I will beg leave, simply, to state the question to your Excellency.

It was agreed, by the article abovementioned, that the ships of France should forever be treated upon the footing of the most favored nation in the ports of Louisiana.

Vessels of certain foreign nations being now treated in the ports of the United States (including those of Louisiana) on the same footing with American vessels, in consideration of the American vessels being treated in the ports of those nations on the same footing with their own vessels, France has required that French vessels should, by virtue of the said article, be treated in the ports of Louisiana, on the same footing with the vessels of those nations, without allowing, on her part, the consideration, or reciprocal condition, by virtue of which those vessels are thus treated.

The United States contend, that the right to be treated upon the footing of the most favored nation, when not otherwise defined, and when expressed only in those words, is that, and can only be that, of being entitled to that treatment, gratuitously, if such nation enjoys it gratuitously, and on paying the same equivalent, if it has been granted in consideration of an equivalent. Setting aside every collateral matter and subsidiary argument, they say, that the article in question, expressed as it is, can have no other meaning, is susceptible of no other construction, for this plain and incontrovertible reason: that; if the French vessels were allowed to receive, gratuitously, the same treatment which those of certain other nations receive, only in consideration of an equivalent, they would not be treated as the most favored nation, but more favorably than any other nation. And, since the article must necessarily have the meaning contended for by the United States, and no other, the omission or insertion of words to define it, is wholly immaterial, a definition being necessary only when the expressions used are of doubtful import; and the insertion

of words to that effect in some other treaties, belonging to that class of explanatory but superfluous phrases, of which instances are to be found in so many treaties.

It might, indeed, have, perhaps, been sufficient to say, that, in point of fact, there was no most favored nation in the United States, the right enjoyed by the vessels of certain foreign nations to be treated in the ports of the United States as American vessels, in consideration of American vessels receiving a similar treatment in the ports of those nations, not being a favor, but a mere act of reciprocity.

Let me also observe, that the pretension of France would, if admitted, leave no alternative to the United States, than either to suffer the whole commerce between France and Louisiana to be carried exclusively in French vessels, or to renounce the right of making arrangements with other nations deemed essential to our prosperity, and having for object not to lay restrictions on commerce, but to remove them. If the meaning of the 8th article of the Louisiana treaty was such, indeed, as has been contended for on the part of France, the United States, bound to fulfil their engagements, must submit to the consequences, whatever these might be; but this having been proven not to be the case, the observation is made only to show that the United States never can, either for the sake of obtaining indemnities for their citizens, or from their anxious desire to settle by conciliatory arrangements all their differences with France, be brought to acquiesce in the erroneous construction put upon the article in question.

The proposal made by his Excellency, Mr. de Villèle in his letter of the 6th of November, and reiterated in that of the 15th, can, therefore, have no other effect, than to produce unnecessary delays, and would, if persisted in, be tantamount to an indefinite postponement of the examination and settlement of the claims of the citizens of the United States. It will remain for his Majesty's government to decide whether this determination be consistent with justice, whether the reclamations of private individuals should be thus adjourned, because the two governments happen to differ in opinion on a subject altogether foreign to those claims. Having nothing to add to my reiterated and unavailing applications on that subject, my only object at this moment, has been, to show that I cannot expect any instructions from my Government that will alter the state of the question.

I request your Excellency to accept the assurance, &c.

ALBERT GALLATIN.

*His Excellency, Viscount de CHATEAUBRIAND,
Minister of Foreign Affairs, &c. &c. &c.*

